

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

OLD GRANITE DEVELOPMENT,) Docket No. 3:06CV2950
LTD.,)
Plaintiff,) Toledo, Ohio
v.) May 20, 2008
CITY OF TOLEDO,) Jury Trial
Defendant.)

TRANSCRIPT OF JURY TRIAL, VOLUME 1
BEFORE THE HONORABLE JACK ZOUHARY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
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1 THE COURT: The record should reflect that we are
2 back in court, counsel present, jury not yet brought into
3 the courtroom.

4 Yesterday afternoon we completed a jury view. I
5 will file, this morning, a brief outline of highlights from
6 that jury view.

7 I also want to confirm on the record this
8 morning, my ruling last Friday on wetlands and granting the
9 defendant's motion in limine with respect to the wetlands.
10 I reviewed the deposition testimony, and it does comport
11 with representations by defense counsel. There will be an
12 order that will be filed this morning on that issue as
13 well.

14 I'm also confirming my ruling of last week with
15 respect to testimony from other property owners, and there
16 will be an order on file supplementing my ruling last
17 Friday on that as well. There was an oral motion raised by
18 defense counsel with respect to the taking claim. Counsel
19 provided The Court with two cases. I did not receive
20 anything from plaintiff's counsel in opposition or response
21 to those cases. Nonetheless, I will file an order this
22 morning that will delay that motion in limine for the
23 reasons set forth in the order. Succinctly stated, I do
24 not believe that the arguments raised by defense counsel
25 are germane to the taking claim in this case and that the

1 case citations are not applicable to the taking claim in
2 this case. I believe that summarizes and completes ruling
3 on all pending motions.

4 I also want to indicate that I discussed with
5 counsel yesterday afternoon time limits for opening, and
6 I'm granting them each up to 25 minutes, and that I will
7 indicate to counsel a two-minute warning if they approach
8 that time limit so that you know your time is soon to be
9 expiring. I know that there has been a history in this
10 case of vigorous and appropriate representation of your
11 respective clients. That's fine. I caution counsel during
12 the course of this trial to avoid any digs against opposing
13 counsel, to keep your discourse civil, and to keep your
14 comments and questions directed toward me and not each
15 other.

16 Anything further from counsel for either side?

17 MR. ROBON: Your Honor, I indicated off the
18 record I intended to call Judy Seibenick from Hospice, and
19 Your Honor's ruling about other flooding prohibits that,
20 but I would proffer that her testimony would be that as
21 follows: Number one, that Hospice of Northwest Ohio, Inc.,
22 which is one of the adjacent property owners, did not
23 receive any notice, either written or verbal, about the
24 installation of the public facility of the city water main.
25 They had no advanced notice before the trees were cut that

1 anything was going to happen to the rear of their property,
2 that subsequent to the installation of the city water main
3 Hospice experienced substantial flooding, also the W. W.
4 Knight Preserve, which is next door, experienced
5 substantial flooding, and the city did come out and put a
6 swail in to divert the water down towards Bates Road.

7 The evidence eventually is going to be that the
8 topography of the area is that the Hospice land and the
9 W.W. Knight Preserve are higher than the Cambridge
10 subdivision, and a portion of that water is now on the back
11 of the Cambridge subdivision.

12 THE COURT: I'm not sure how she can tell or
13 testify as a layperson where the water is coming and going.
14 With respect to the issue of notice, there's been no
15 document filed to date with The Court that would indicate
16 that notice was required or that notice was or was not
17 given. As I indicated off the record, it seems to me that
18 those issues with respect to notice are easily
19 ascertainable outside the testimony of someone like this
20 who is not directly involved with the property or this
21 lawsuit and can easily be shown through either records or
22 official documents or testimony from some official.

23 And with respect to flooding on someone else's
24 property, as I indicated last week, without connecting the
25 flooding there with the flooding on this property, that

1 would be pure speculation for the jury, and there needs to
2 be a connector, either expert or otherwise, that can do
3 that, and that has not been shown to The Court.

4 Anything further from defense counsel or
5 plaintiff's counsel?

6 MR. ROBON: Are you going to have a separation of
7 witnesses, because one of my witnesses is here?

8 THE COURT: Yes, The Court will order a
9 separation of witnesses. What that means is, anyone who's
10 expected to testify in this case must remain outside the
11 courtroom until it is his or her time to testify. Party
12 representatives are excused from that order, and I also ask
13 counsel, since you know who your witnesses are and I don't,
14 to monitor that order and make sure that your witnesses do
15 remain close at hand.

16 MR. BAHRET: Your Honor, when you say "party
17 representatives," I'm assuming each side has one
18 representative?

19 THE COURT: That's correct.

20 MR. BAHRET: They have two sitting there.

21 MR. ROBON: They are both owners, Your Honor,
22 50/50. And I think it would be highly prejudicial if the
23 two owners of the limited liability company could not sit
24 in because they perform different functions. Mr --

25 THE COURT: It's like a corporation. It seems to

1 me you have a corporation with a multitude of owners and
2 officers, and there's only one designated representative.

3 MR. ROBON: I've never had that happen in --

4 THE COURT: In a corporation, a corporation.

5 MR. ROBON: A limited liability company, Your
6 Honor, so partnership. And partners have always been
7 allowed to sit in trial. And particularly this case,
8 because Mr. Laskey was the money person and was the
9 marketing person, and Mr. Taylor was the contractor who did
10 all the installation and things of that nature.

11 THE COURT: Well, aside from their differing
12 roles, the issue is, are they entitled to more than one
13 representative?

14 MR. BAHRET: Your Honor, with all due respect to
15 Mr. Robon, but I've never seen it not done where they're
16 separated. It's a corporation. It's an LLC, it's a form
17 of a legal entity.

18 THE COURT: It would be like a law firm LLC. And
19 if there was a law firm who was a party, would you have
20 more than one, quote, unquote, partner at the table?

21 MR. ROBON: Well, I can tell you we were sued for
22 malpractice and there were three partners sitting at the
23 table for -- across the street with Judge Skow several
24 years ago, never was an issue.

25 And I think in this case where both of them have

1 signed a \$2 million loan, to exclude one of them from the
2 proceedings would be highly prejudicial.

3 MR. BAHRET: Your Honor, the signing of the loan
4 is irrelevant. It's a legal entity. They're entitled to
5 have one representative and only one. I can't bring in
6 multiple tax payers to sit here with me.

7 THE COURT: Well --

8 MR. ROBON: Well, you have representatives from
9 the law department here.

10 MR. BAHRET: They're not witnesses, though,
11 Marve. You can bring all the people that love Old Granite
12 in here that you want as long as they're not witnesses.

13 THE COURT: It was my understanding that --

14 MR. ROBON: Mr. Taylor --

15 THE COURT: Thank you. Mr. Taylor was not going
16 to be here during the entire trial, in any event?

17 MR. ROBON: That's correct.

18 THE COURT: He's only going to be here for
19 portions of the trial.

20 MR. ROBON: He wasn't here yesterday, for the
21 record.

22 THE COURT: It seems to me that Mr. Laskey has
23 led the bulk of the efforts on behalf of the plaintiff in
24 this case, and Mr. Laskey was here yesterday. He's been at
25 the pretrial hearing. Seems to me that Mr. Laskey can

1 continue to be the representative for the plaintiff, and
2 Mr. Taylor, since he will be in and out, I will ask that he
3 remain out when he is not testifying.

4 MR. ROBON: My only other concern for The
5 Court -- and this is kind of an embarrassing matter for
6 Mr. Laskey. He is very, very hard of hearing, and I found
7 that out during depositions when he was questioned.

8 THE COURT: We have headphones. He can use them.
9 As long as people are using the mics, he'll be able to pick
10 it up. We have those for jurors as well. If there's any
11 other party representative that would like one, you're
12 welcome to it.

13 MR. BAHRET: Further on the point of the
14 corporate representative, I know you've already ruled, but
15 just for purposes of the record, Mr. Laskey was at almost
16 all of the discovery depositions. Mr. Taylor was at zero.

17 MR. WATKINS: On another subject, I don't know if
18 The Court wants this addressed right now, but I have a
19 brief statement about the jury instructions that was given.

20 THE COURT: About the instructions that were
21 given yesterday?

22 MR. WATKINS: Well, what wound up, yes, what
23 wound up happening is plaintiff's counsel did submit
24 proposed instructions, and to the extent that they had
25 asked for instructions, and on the instructions they had

1 asked for that we objected to, counsel was kind enough to
2 put under those instructions "defendant objects to this
3 request." What didn't happen, though, was any listening by
4 plaintiff's counsel in that filing of the requests that
5 defendant has made, so we separately filed them yesterday
6 --

7 THE COURT: Well --

8 MR. WATKINS: -- is long with -- I mean, we had
9 previously filed some, but we withdrew some after we spoke
10 with counsel, but they're both a matter of record.

11 THE COURT: Well, the record can reflect that the
12 trial order in this case required a joint-proposed jury
13 instruction. The Court did not receive that. And in
14 discussions with counsel last week, asked that they put
15 their heads together. The Court was on the understanding
16 it would receive those Sunday. They were not received
17 Sunday, and they were not received Monday. And today is
18 Tuesday. I'm going ahead today, and I'm preparing a draft
19 of proposed jury instructions along with proposed jury
20 interrogatories, which I will share with counsel, and I've
21 already said enough about The Court's disappointment in
22 having what it felt would be an appropriate launching pad
23 for The Court to work with with respect to those
24 interrogatories and instructions. Nonetheless, we're
25 plowing ahead, and I hope to have something for you if not

1 at the end of the day today, certainly first thing tomorrow
2 morning for you to review.

3 The Court should also indicate -- and I believe
4 we confirmed this last week -- that there was a witness
5 that the plaintiff intended to call, and it was a
6 late-in-the-game disclosure with no opportunity for the
7 defendant to learn about that witness' testimony, and
8 therefore, again, pursuant to the long-standing trial order
9 of this case, The Court granted the defendant's request to
10 exclude that witness.

11 I'm done. Anything further from either side? If
12 not, are we ready for the jury.

13 Carol?

14 Good morning. You may be seated.

15 (Jury brought in at 8:30 a.m.)

16 THE COURT: We had some more logistical
17 intellectual interviews which we're still working on, but
18 hopefully we're up and running. You'll find on your chairs
19 some preliminary jury instructions which I'll ask you to
20 turn over. I'm going to read and ask you to follow along
21 with me.

22 Those who participate in a trial must do so in
23 accordance with established rules. This is true of the
24 witnesses, the lawyers and The Judge. It is equally true
25 of you as jurors. The lawyers present the evidence

1 according to the rules; The Judge enforces the rules and
2 determines what evidence may be admitted. It is the duty
3 of the Judge to instruct you on the law, and it is your
4 duty to follow the law as I will state it to you, both now
5 and at the conclusion of all the evidence.

6 The trial procedure is as follows: First, the
7 lawyers offer in their own opening statements what the
8 evidence will be. Then plaintiffs offer its evidence.
9 Next the defendant may offer evidence. Then the plaintiff
10 may present a rebuttal. The trial concludes with closing
11 arguments by the lawyers and the final instructions of law
12 from me, after which you will retire to deliberate on a
13 verdict.

14 It is your exclusive duty to decide all questions
15 of fact submitted to you. In connection with this duty,
16 you must determine the effect and value of evidence. You
17 must not be influenced in your decision by sympathy,
18 prejudice, or passion toward any party, witness, or lawyer
19 in the case.

20 If in these instructions or in the instructions
21 that I will give you at the conclusion of the evidence, any
22 principal or idea is repeated or stated in varying ways, no
23 emphasis is intended, and none must be inferred by you.
24 Therefore, you must not single out any particular sentence
25 or individual point or instruction and ignore the others,

1 but rather, you are to consider all of the evidence
2 instructions as a whole and are to consider each
3 instruction in relation to all of the other instructions.

4 The fact that I give you some of the instructions
5 now and some at the conclusion of the evidence has no
6 significance as to their relative importance, nor does the
7 order in which I give you the instructions.

8 Lawyers for the party will of course have active
9 roles in and make objections. Remember that lawyers are
10 not witnesses, and since it is your duty to decide the case
11 solely on the evidence that you see or hear in the case,
12 you must not consider as evidence statements of the
13 lawyers. There is an exception, and that is if the lawyers
14 agree to any fact. Such agreement, we call it a
15 "stipulation" or "admission," will be brought to your
16 attention, and it will then be your duty to regard such
17 fact as being conclusively proved without the necessity of
18 further evidence.

19 If a question is asked and an objection to the
20 question is sustained, you will then not hear the answer,
21 and you must not speculate as to what the answer might have
22 been or the reason for the objection. If an answer is
23 given to a question and The Court then grants a motion to
24 strike out the answer, you are to completely disregard such
25 question and answer and not consider them for any purpose.

1 A question, in and of itself, is not evidence, and may be
2 considered by you only as it supplies meaning to the
3 answer.

4 During the course of the trial certain testimony
5 may be read into evidence from a written transcript or
6 shown to you by a video. This testimony has been taken
7 under oath before trial and typed up into a booklet for use
8 by the lawyers. This testimony, known as a deposition, is
9 to be considered by you the same as if all such questions
10 and answers were given here in The Court from the witness
11 stand.

12 As jurors, you have the sole and exclusive duty
13 to decide the credibility of the witnesses who will testify
14 in this case, which simply means that it is you who must
15 decide whether to believe or disbelieve a particular
16 witness. In determining these questions, you will apply
17 the tests of truthfulness that you apply in your daily
18 lives. These tests include the appearance of each witness
19 on the stand; his or her manner of testifying; the
20 reasonableness of the testimony; the opportunity he or she
21 had to see, hear, and know the things concerning which he
22 or she testified; his or her accuracy of memory; frankness
23 or lack of it; intelligence; interest and bias, if any;
24 together with all the facts and circumstances surrounding
25 the testimony.

1 Applying these tests, you will assign to the
2 testimony of each witness such weight as you deem proper.
3 You are not required to believe the testimony of any
4 witness simply because it was given under oath. You may
5 believe or disbelieve all or any part of the testimony of
6 any witness.

7 You should not decide any issue of fact merely on
8 the basis of the number of witnesses who testify on each
9 side of an issue. Rather, the final test in judging
10 evidence should be the force and weight of the evidence
11 regardless of the number of witnesses on each side of an
12 issue. The testimony of one witness believed by you is
13 sufficient to prove any fact.

14 Also, any discrepancies in a witness' testimony
15 or between his or her testimony and that of others does not
16 necessarily mean that you should disbelieve the witness, as
17 people commonly forget facts or recollect them erroneously
18 after the passage of time. You are certainly aware that
19 two persons who witness the same incident may often see or
20 hear it differently. In considering a discrepancy in
21 testimony, you should consider whether such discrepancy
22 concerns an important fact or a trivial one.

23 An expert witness is one who, through study or
24 experience or both, has acquired skill that makes him or
25 her better qualified than the average person to form an

1 opinion. For example, parties may choose to have an
2 engineer testify as to the drain pipe and what role, if
3 any, it may have played in any flooding or to testify as to
4 the boundary lines between the trees and vegetation were
5 removed, or how plaintiff's property may have been damaged,
6 if you find defendant at fault.

7 This does not mean, however, that you are to
8 consider yourselves bound by the opinion of any expert.
9 Where expert opinions are in conflict, it is for you, as
10 tryers of fact, to determine which is the more worthy of
11 belief. In such event, as with all witnesses, in
12 determining what is the greater weight of the evidence, you
13 should not content yourselves with a mere counting of the
14 number of witnesses, but should consider relative
15 qualifications, credibility, and believability.

16 This concludes my preliminary instructions.
17 We're now ready for the opening statements of counsel. I
18 remind you these statements are not evidence but rather an
19 opportunity for the lawyers to tell you what they believe
20 the evidence will be in support of their respective
21 positions.

22 Yesterday Mr. Robon indicated that Mr. Taylor,
23 one of the partners with Mr. Laskey in Old Granite, would
24 be here during the trial, and he will be here during the
25 trial during his testimony, however, he will not be present

1 during the entire trial, so I bring that to your attention
2 based on a ruling that The Court made. And with that, we
3 are ready for plaintiff's opening.

4 MR. ROBON: Thank you, Your Honor.

5 Good morning, ladies and gentlemen.

6 A trial in a civil case is a search for the truth
7 and a reconstruction of what's happened, whether it's an
8 accident case --

9 THE COURT: Excuse me, Marve, I'm sorry. You can
10 see what happens when the mic's not working, and for our
11 court reporter as well as me and the jury to hear you --

12 MR. ROBON: Speak up.

13 THE COURT: Either speak up or be close to a mic.
14 We have a portable mic, okay, if you want, but I'll leave
15 those options up to you.

16 MR. ROBON: If I can use the portable mic.

17 The opening statement gives us an opportunity as
18 attorneys to give you what we call a snapshot or a preview
19 of the evidence. Now, yesterday you saw the subdivision.
20 That's not evidence. That's just what's there, what we
21 have and what we're going to introduce into evidence today
22 or tomorrow or the next day.

23 This is an overhead aerial taken by the county of
24 the river, River Road, which is a very exclusive -- very
25 wealthy people live there in mansions, I guess, is a good

1 way to put it. This here is the Cambridge subdivision, and
2 this here was the greenery that was along the railroad
3 tracks. This was taken in 2006 prior to the excavation and
4 the clearing of the trees. And this shows, from Bates
5 Road, which is where the bus took you up here and down
6 River Road, and here all the way over to White Road and to
7 Ford Road and the turnpike.

8 We have another one that's a little bit closer.
9 And this one -- this one here shows the Cambridge
10 subdivision right here, and it shows Hospice is down here,
11 the W.W. Knight Preserve here, and you will see there are
12 two rows, one row here of trees, and then another row on
13 the opposite side. And in between was the old Toledo
14 terminal railroad track back in the early 1900s when they
15 had an inter-urban track, and it's been abandoned for many,
16 many years.

17 The evidence is going to show that the CSX
18 railroad that owned and still owns that right of way -- and
19 that's an active track behind it -- but we own both the
20 unactive track and the active track, sold an easement to
21 the City of Toledo for \$2.1 million so the city could
22 install a 66-inch water main to service northern Wood
23 County.

24 And one of the interesting things about this
25 case, and one of the reasons we're in federal court, is the

1 city did this outside of its jurisdictional limits. This
2 property is in Wood County. The City of Toledo doesn't
3 extend into Wood County. It's just in Lucas County. The
4 city makes a profit, the evidence is going to show, by
5 selling water to Perrysburg, Rossford, Perrysburg Township,
6 and all the municipalities in northern Wood County. They
7 sell it at a higher rate than they charge the Toledo
8 residents. So it was a profit making venture for the City
9 of Toledo. In fact, the total project, we understand, is
10 about \$50 million, not just for this 1 mile, but for the
11 entire project, to bring the water out to northern Wood
12 County.

13 Well, our evidence is going to show that there's
14 a video taken by Ric Man Construction, which was a general
15 contractor for the City of Toledo. And the video that
16 you're going to see is going to show an individual in April
17 of 2006 walking down this path right here, and he talks
18 about I'm at station 175. I'm at station 180. Those are
19 survey points. And you will, if you listen clearly, hear
20 him say, My goodness, there is a subdivision back here that
21 we didn't know anything about. And the evidence is going
22 to show that the City of Toledo did not show that
23 subdivision on its plans. Which, you know, they could have
24 stayed 10 feet away from the property line, and we wouldn't
25 be here in court rather than for the flooding, but they

1 didn't do that.

2 The evidence is further going to show that
3 Ms. Soncrant drove her Jeep or some other type of
4 four-by-four vehicle down this road where the old track
5 was, saw the subdivision, but did not make any special
6 plans or concerns about the value of the property or what
7 was going to be done to it. There was no notice to any of
8 the property owners here that the City of Toledo was going
9 to come in and cut trees down that were 70, 80 feet tall
10 that had been growing for dozens and dozens of years, let
11 alone cut trees and brush and brambles on the property of
12 the Cambridge subdivision.

13 Brambles are a term that you're going to learn
14 about. I belong to Belmont Country Club which is across
15 right in here. And Belmont Country Club was owned by
16 W.W. Knight, who started First National Bank here in
17 Toledo; it's now Fifth Third Bank. And he had a hunting
18 preserve on the Belmont Country Club up until 1964. And
19 they planted these brambles, which were intertwined so
20 thickly that game --

21 MR. BAHRET: Your Honor, Your Honor, he's
22 testifying. There's going to be no witness coming forward
23 to talk about that.

24 THE COURT: There is -- as I indicated to the
25 jury, this is an opportunity for counsel to indicate what

1 the evidence will be, and it's not evidence. Whether there
2 will be testimony about this or not, I don't know yet. I
3 just repeat my earlier instruction that counsel's -- where
4 this is a road map, and we'll have to wait and see what the
5 evidence is in trial.

6 MR. ROBON: Thank you, Your Honor.

7 But the brambles are so intertwined -- and you'll
8 see pictures of them -- that even when the leaves are off,
9 a strip of brambles that's 4- or 5-feet wide at the base,
10 can hang over several feet on either side and act as a
11 total screen buffer. You'll -- you've seen it in many
12 places when you go down the road, and you'll see condos or
13 something and you'll see greenery that's maybe 2- or 3-feet
14 wide. It blocks off the view of what's behind it.

15 In any event, the evidence is going to show that
16 a contractor named Vermillion, which was a subcontractor of
17 Ric Man, the city's general contractor, came in with very,
18 very large clearing machines. Machines that had saws three
19 or 4 feet in diameter spinning like this, and they cut
20 every single tree and brush in front of the Cambridge
21 subdivision.

22 Interestingly, when you were there yesterday, I
23 don't know if you noticed, but down here further, they
24 didn't cut clear up to the property line. And I think the
25 reason was there was a chain link fence over here, so they

1 stayed a few feet away from it on the adjoining property
2 owners. But the evidence is going to show that they cut
3 everything. In addition to cutting everything, their
4 contract required them to get rid of the stumps and the
5 brush, they had to haul it all away, chop it up. Well,
6 when they pulled out the brambles -- if this was a line of
7 brambles right here between the -- you'll see the
8 railroad's here and Cambridge is here, the roots are
9 interconnected, and they just ripped them out. There will
10 be pictures that you will see of the brambles that were
11 cut. Most of it's covered up now with mud. But that's the
12 first part of our case. And there's going to be evidence
13 that the cutting of those trees substantially diminished
14 the value of the lots.

15 And this is an overlay, bigger what is called a
16 plat map. What did I do with my little -- the evidence is
17 going to show that this is the CSX right of way along here.
18 Yesterday you were on lot 15. That's where the spec house
19 is. We went and we looked at a corner monument that was
20 right here, if you'll recall, and then behind the corner
21 monument was the railroad fence. The evidence is going to
22 show by a professional surveyor that the railroad fence was
23 off the line. It was over on our property line.

24 Secondly, it's going to show that the cutting
25 took place on Cambridge property. It's going to be, I

1 think, undisputed, a question of how many feet they went
2 into the Cambridge property. But there was trees, brush,
3 and brambles on 16, 15, 14, 13 and 12 down here, there
4 wasn't much on the last three lots.

5 To compound matters, after -- and by the way,
6 this was done like in a day's time when they came through
7 here with this big machine, cut everything down, and left
8 everybody agasp. There was no notice, no notices to the
9 owners of any type that any kind of thing was going to be
10 taking place on this railroad property. So the next thing
11 that happened after they cut the brambles is, there's a
12 manhole that we didn't see yesterday that is located --
13 this is a drawing that was done by a graphic artist, done
14 to scale, shows the subdivision. It shows the small ditch
15 that was there, the blue is where the city water line is
16 and then the railroad tracks. So the evidence is going to
17 show that there was a manhole right here, just off of lot
18 16 on the railroad property. That manhole is a container
19 where water runs in and then it has to run someplace. And
20 the evidence is going to show that when they were
21 installing that water main, the cutting took place in April
22 of 2006. The water main actually is being installed in the
23 summer of 2006. They ran across a 24-inch drain tile right
24 in the path of the water main.

25 So the engineers, the city got together and

1 there's going to be some dispute between what the Wood
2 County engineer is going to say and the city is going to
3 say as to where the water's supposed to go. But in
4 actuality, what's happened is when they cut it, there was
5 no water on it because it was summer time. So they put a
6 bulkhead on either side of it. So right now that drain
7 goes no place, and it's got a 66-inch water main right in
8 the middle of it. So what's happening is that this
9 manhole, which took the water from the railroad down here
10 all down here behind the Cambridge subdivision -- and
11 actually there will be testimony from a gentleman
12 shortly -- over here on Bates Road, their water drained
13 into this manhole, and then it drained across into this
14 railroad ditch, and then eventually out to the Maumee
15 River.

16 The flooding compounds the devaluation or
17 diminishment of value of the property. What the owners
18 attempted to do initially is during construction, they
19 said, my goodness, look at the railroad, what can we do?
20 They brought in, I think, 100 or 140 loads of fill dirt to
21 build up across the back, and they started on lot 16 where
22 the tile was pointed out yesterday to some of you. You saw
23 the tile underneath the water. Well, what they did is,
24 they took this drain tile and tied it into this railroad
25 drain. The problem is, the railroad drain doesn't go any

1 place any more because it was severed, so water just sits.
2 And when it gets heavy rain, the water backs up in this
3 whole area here, all the way down here. And evidence is
4 going to show that it gets up within a few feet of the
5 house -- and we have photographs of that that were taken in
6 December of 2006, including the ducks.

7 Rather than finishing and putting more fill dirt
8 in to try and block the view of the railroad, all of a
9 sudden --

10 Wait a minute, you're covering up the evidence of
11 what was cut and the property line.

12 So Mr. McCarthy, who is an engineer, went back.
13 And if you noticed yesterday, there was an excavation right
14 behind -- there was a mound of earth and then like a dip.
15 That is where all the brambles were cut and exposed so that
16 the surveyors could see the actual lines where the property
17 was truly, and that's what Mr. Nye is going to testify
18 about today, where the property land really was.

19 The evidence is also going to show that to cure
20 this situation -- these lots right now are not saleable.
21 Nobody's going to buy a lot that looks at a railroad with
22 water flooding in the back of it.

23 To cure the water problem, the evidence is going
24 to show that what they will have to do is put a deep trench
25 in here. And bare in mind, this is about six or 7 feet

1 lower than it is out at the street. So the trench here is
2 going to have to start about 12-feet deep. They'll have to
3 run a trench by their own between lots 15 and 16, bore
4 under the road, and go up here. This is a green space that
5 the county required as part of the subdivision plan.
6 They'll probably have to build a retention pond, and then
7 have it tie into the storm drain on River Road. Cost
8 estimates are close to \$200,000 to solve that drainage
9 problem.

10 The evidence is also going to show -- and by the
11 way, we have four experts. We have an engineering expert,
12 a surveying expert from Peterman and Associates in Findlay
13 that's going to talk about the property line. We have an
14 MAI appraiser. MAI appraiser is the highest appraisal
15 status that you can have. And we also have an arborist who
16 is going to talk about, you know, the cost of restoring
17 some type of barrier along the back of that property so
18 that the railroad is less visible, less noisy, less
19 intrusive.

20 In this particular case, the actions by the City
21 of Toledo constituted a trespass. They were negligent.
22 They -- it violated the United States laws by taking the
23 property that they didn't own and using it. And the
24 purpose of a trial is for us to present to you the facts
25 and the evidence and for you to make a decision.

1 If you don't believe us, you come back with \$0.
2 If you believe us, you come back with an award that would
3 be fair to compensate the property owners.

4 There's going to be a lot of testimony in this
5 case about marketing, why the lots didn't sell right away.
6 The subdivision was completed in late 2001, early 2002.
7 They sold off eight lots. There are six homes here
8 constructed, and outside of our property that the property
9 owners own, and two other lots were sold, so eight lots
10 total out of 22. So there's 14 lots left, including the
11 house that is on lot 115, which is a spec house.

12 The evidence is going to show that since there's
13 no money, there's no payment. The house on lot 15 is under
14 foreclosure by First Place Bank. The developers are in
15 default with First Federal Bank of Defiance on their
16 \$2 million development loan. They're delinquent on the
17 real estate taxes on all of the lots because there's no
18 money being generated by any sales of the lots. The MAI
19 appraiser that is going to come in is going to testify that
20 these lots, when the trees and the barrier were cut down,
21 were diminished in value by at least 50 percent. These
22 lots were selling for between a hundred and a 125,000.
23 He's come up with the price that maybe they're worth 50 or
24 60, maybe 70, a couple of them, still today -- which in my
25 mind is questionable after I was out there yesterday with

1 the train in the back.

2 Interestingly, the city's appraiser has come up
3 with a very similar value. The city's appraiser is going
4 to testify that these lots are now worth about \$60,000.
5 The difference is the city appraiser says they -- all the
6 lots, with all that cutting and everything else that
7 happened, only diminished by a total of \$20,000. Our
8 appraiser says it's \$355,000 diminishment in value of the
9 lots. So there's a lot of factual disputes.

10 I don't think the city's going to own up and tell
11 you that they trespassed and they're sorry for it. I think
12 they're going to dig their feet in and bite like heck and
13 that's why we're here today. And I hope that after you
14 hear all the evidence, use your reasoning, you'll come to
15 the conclusion that Mr. Laskey and Mr. Taylor were harmed.

16 I thought Mr. Taylor was going to sit in. We're
17 only allowed one representative from the company, so the
18 only time he can be here is when he testifies. Mr. Laskey
19 will be the company representative. Mr. Laskey's hard of
20 hearing. He's got --

21 Do you have your head phones on?

22 But we hope that you will be fair, impartial,
23 just listen to the facts, and I think that you will
24 understand why we're in court here today. Thank you.

25 THE COURT: Thank you.

1 Bob?

2 MR. BAHRET: Thank you, Your Honor.

3 Good morning. It's my privilege to represent the
4 City of Toledo in this case, and I intend to do it fairly
5 and honestly.

6 You have already been given misinformation. You
7 heard him say that nobody got any notice. Well, first of
8 all, I don't believe notice is required, but notice was
9 published in the newspaper long before the project. There
10 was a public meeting held in a meeting hall for anybody
11 that was interested, not required, but it was done.

12 The water main both begins and ends in the City
13 of Toledo. It goes down the railroad right of way, and
14 then goes under the river ending back in Toledo near the
15 Anthony Wayne trail. So I don't know what the business
16 about selling water to Wood County is all about. It's true
17 the city does it, but I don't believe with that particular
18 line. It's irrelevant in any event.

19 The issue here is, was Cambridge harmed by
20 activity of the City of Toledo that took place on Cambridge
21 property? That's key. There's no question -- I'll try to
22 keep my voice up because I move around a little bit.

23 There's no question that there were trees between
24 the abandoned railway line and the existing railway line
25 where you saw a train yesterday. There were trees there.

1 There's no question there were trees, some trees behind
2 Cambridge. You'll see aerial views. There's no question
3 that there were weeds and junk growing on that railway, the
4 abandoned railway right of way where the pipe sits now.
5 There's also no question that they needed to be removed to
6 fit this large pipe in there, and there's no question under
7 the law that Cambridge has no right to complain about it
8 even if they now see the rail -- the railroad cars better
9 than they saw them before. They don't have the right to
10 cry foul, but they do. They don't even contend that
11 anything was removed from Cambridge property on this half
12 of the development. They don't even claim they trespassed
13 down there. So obviously, they're not going to claim you
14 can't see the train even if everything went just swimmingly
15 great. You can see the train on this half of the
16 development perfectly with no obstructions at all, even
17 without a trespass. They'll have to admit that.

18 They're down on this end, there might have still
19 been a 3-foot or 2-foot barrier, as they call it. You will
20 see in the preconstruction video that this development is
21 easily seen from the abandoned right of way. You'll see it
22 on videotape before anything was cut. There was a tree
23 here or a tree there, but it wasn't like it's just a wall.
24 You could see the train. You could hear the train.

25 You'll hear from the guy that lives in that spec

1 house -- free of charge by the way -- you will hear him
2 when asked -- and when I talk to you about what you'll hear
3 from a witness, I operate with the assumption that they'll
4 tell you the same thing that they said at deposition. So
5 assuming he says the same thing that he said at
6 deposition -- and I'm sure he will -- when asked, could he
7 hear the train before the trees were cut, he says, oh,
8 yeah, oh, yeah. Wake them up at night repeatedly.

9 You'll see how close Bates Road was to that
10 development. The trains blow their whistle as they
11 approach Bates Road. And you can easily hear that whistle.
12 And by the way, the train that you saw yesterday, I'm sure
13 you noticed it was a work train. It wasn't the regular
14 coal trains and stuff, which is why it was going that slow.
15 Train yesterday was going about walking speed, which is not
16 the speed the normal trains go.

17 What you will hear is that there was a railroad
18 fence. In fact, during the walk through yesterday, The
19 Judge told you there was a fence there because nobody
20 disputes that there was a railroad fence that went all the
21 way down, not just behind Cambridge, but goes for miles and
22 miles.

23 You will hear the plaintiff's expert tell you,
24 first of all, surveying is not an exact science. If you
25 get three surveyors in the room, you're going to get three

1 different landmarks; that's just a fact of life. They'll
2 disagree by inches, maybe sometimes feet. It's rare when
3 they put the marks in the same exact spot. But their
4 expert is going to say that on a job like this, it is
5 reasonable to give credibility to the railroad fence and
6 just stay inside the fence. That's what the city's
7 contractor did. Their expert will agree with ours that
8 nobody went on the wrong side of the railroad fence. All
9 the clearing was on the railroad side. Our experts will
10 tell you and the contractor will tell you -- which by the
11 way the contractor and Vermillion are no longer parts of
12 this lawsuit. They had been, they settled. They will tell
13 you that they need --

14 MR. ROBON: Can we approach the bench?

15 THE COURT: Yes, you may.

16 (A side-bar conference was had off the
17 record.)

18 THE COURT: Ladies and gentlemen, there was a
19 comment by defense counsel with respect to Vermillion
20 having been a party to this lawsuit. I'm going to instruct
21 you to disregard that comment as best you can. Strike it
22 from your memory bank. That's not an issue before you, and
23 it's not something that need concern you.

24 You may continue.

25 MR. BAHRET: Thank you, Your Honor.

1 You will hear the representative from Ric Man --
2 which is the name of the general contractor that installs
3 the pipeline -- you'll hear them say that this was a tight
4 space.

5 Now, you saw the abandoned right of way. That
6 may seem like some good space, but consider you're bringing
7 in a lot of pipe. You've got to stack the pipe, you've got
8 to dig a big trench, you've got heavy equipment you've got
9 to move around. This was a tight space. They needed all
10 of it cleared to operate. And you'll hear them say that.

11 Again -- and I emphasize it's not actionable,
12 even if they didn't need all the space because it's not on
13 the Cambridge property -- but what actually -- what they
14 did, because it was so tight in that ditch that's between
15 the active railway and the abandoned railway -- I think
16 some of you saw that ditch yesterday -- they were filling
17 that as they went so they could back their equipment on it,
18 and then as they'd move out, they'd just dig it back behind
19 them. So it was like a moving line, that gave them an
20 extra 10 feet or more to use. Just evidence of how tight
21 the job was.

22 But on the issue of this "crossover pipe," is the
23 terminology you'll hear, "crossover culvert," the so-called
24 drain that went under the abandoned right of way. I didn't
25 hear counsel tell you that they already had a problem with

1 ponding water before this project ever started, but the
2 evidence will be that they did. That was a problem child
3 for 100 years. In fact, you'll hear Mr. Laskey tell you
4 that he consulted their engineer, this McCarthy guy, about
5 their water problem before that drainage culvert was ever
6 cut. That's what he said at deposition. That's what I
7 expect he'll say again here today or whenever he testifies.

8 What they're claiming is that the water problem
9 supposedly got worse, nobody can quantify it. What you'll
10 hear their engineer that designed their own drainage system
11 say is that in 2006 and 2007 we had some rather unusual
12 events, floods, Findlay went under water. The rain in the
13 summer of 2007 was a 500-year flood. The rain during 2006,
14 I believe, was a 100-year flood. The drainage system in
15 Cambridge was designed for a five-year flood. So they were
16 going to have ponding, significant ponding, no matter what
17 happened to that crossover tile.

18 You'll hear evidence when we talk about, oh, I
19 can't sell a lot, this is key, they didn't sell a lot for
20 three years before this project. Why? They couldn't get
21 rid of the lots. Absolutely nobody bought any of these
22 lots with their backyard touching the railroad tracks,
23 nobody. The lots that were sold are either on the other
24 side of the tracks -- I mean, on the other side of
25 Jacqueline Drive or down here away from the tracks. You'll

1 hear the housing market absolutely went into the toilet
2 right about the same time this project was completed.
3 You'll hear that Old Granite owns two other developments,
4 and they can't sell a lot in those either. And they don't
5 have a problem with a railroad in either of those
6 developments. The housing market is dead. And Old Granite
7 and Cambridge were dead before the water main was put in.

8 The water that you may have seen yesterday, and
9 you saw a little pipe in there that The Judge pointed out
10 to you, the -- most of that water, by the way, is not on
11 Old Granite -- or Cambridge property. In fact, here where
12 my finger is, but that pipe -- and that's an interesting
13 story too. Well, I didn't even know that thing was there.
14 I found out recently. But it's intriguing because the
15 people that are crying foul for trespass, trespassed to put
16 that pipe in. Their expert, McCarthy, got on railroad
17 property, knocked a hole in the side of the underground
18 drainage culvert and put that pipe in without the
19 railroad's permission, without the City of Toledo's
20 permission, with no notice of anybody. And a pipe that
21 apparently would have water in it, he puts a drain in it so
22 the water can come out in that pond you saw. And I don't
23 know what the engineering science behind that maneuver was,
24 but that's what he did.

25 And speaking of trespass, without permission, a

1 couple of days after the right of way was cleared, McCarthy
2 engineers the truck lift. 120 or more huge tandem truck
3 trucks of dirt are brought in on the railroad property
4 without permission, dumped on the railroad property, and
5 then you get a bulldozer and push it towards Cambridge.

6 You saw -- remember that some of you that saw the
7 area where the fence was leaning over and there was the
8 pin? Why do you think the fence was leaning over? They
9 pushed it with the dirt, with tons and tons of dirt. The
10 markings were all covered. The evidence was gone.

11 The survey stakes -- some of you saw a couple of
12 survey stakes out there yesterday. Those are not the ones
13 that were there when this job was done. That's from the
14 resurvey that they did and the city did after this.

15 MR. ROBON: Your Honor, I'm going to object.
16 There's absolutely no evidence of that whatsoever. Those
17 are the original pins that were put in in 2001.

18 THE COURT: Okay, gentlemen.

19 This, again, is counsel's opportunity to tell you
20 what they believe the evidence will be. We have not heard
21 the evidence yet. We will allow counsel to continue his
22 representation.

23 MR. BAHRET: I think he misheard me. I didn't
24 say anything about the pins. I was talking about the
25 stakes, the wood survey -- I think they're called "lats"

1 technically. Those lats are not the ones that were there
2 back at the time this job was done. They were there after
3 the border dispute, if you want to call that. That's when
4 it happened.

5 And interestingly, several of those lats are
6 literally touching the Peterman survey and the city survey.
7 They're touching, they're in the same spot, so they weren't
8 really disagreeing on where the property line is. You will
9 hear from various people about was there any encroachment
10 here or not. In our view, the worse case scenario only
11 applies up here and might be three or 4 inches.

12 And nobody claims there's anything down here
13 removed from their property that they have the right to
14 complain about. You'll hear from the people that are
15 appraising these lots, and they don't take a position on
16 encroachment. They just say because those trees were
17 removed, the lots might be worth less now than they were
18 then. Keep in mind, it's not actionable. It may be worth
19 less, I don't know. But they don't have the right to cry
20 foul because it's not on their property.

21 You'll remember I asked you during the jury
22 selection process if any of you believed you have the right
23 to complain if your neighbor cuts down his walnut tree.
24 You may have loved the walnut tree, you can't cry foul.
25 That's what this case is about. And when we're all said

1 and done, we believe you will be satisfied that there's no
2 evidence, certainly not sufficient evidence to prove that
3 anything happened to that development because of actionable
4 misconduct by the City of Toledo or any of its contractors
5 or subcontractors.

6 Thank you.

7 THE COURT: Thank you.

8 Plaintiff may call first witness.

9 MR. ROBON: Thank you, Your Honor.

10 Was herein, called as if upon examination, was by
11 me first duly sworn, as hereinafter certified, and said as
12 follows.

13 DIRECT EXAMINATION

14 BY MR. ROBON:

15 Q. Would you introduce yourself to the jury, tell
16 the jury your name and where you live.

17 A. My name's John Sumner. I live at 30351 Bates
18 Road. I live on Bates and where the new water line they
19 put in near the railroad tracks. There's some railroad
20 tracks also.

21 Q. So you're three or 400 feet from the Cambridge
22 subdivision?

23 A. That's correct.

24 Q. Okay. And how long have you lived in that area
25 on Bates Road?

1 A. All my life.

2 Q. And how old are you?

3 A. Fifty-two.

4 Q. And you brought us some pictures at your
5 deposition. Do you remember that?

6 A. Yes.

7 Q. I'm going to hand you what we've marked as
8 Exhibit Number 13. It says May of 1967. Did you take that
9 picture?

10 A. My father did probably.

11 Q. You were there?

12 A. No, no --

13 Q. Do you recognize the picture?

14 A. Yes, yes.

15 Q. Would you tell the jury what that picture
16 represents?

17 A. You're looking up the driveway. That's -- the
18 main house is to the right, the garage is to the left, and
19 you're looking back towards Cambridge. Our property line
20 right now runs at the elm tree, the large tree up front.

21 Q. So it abutted the Cambridge subdivision?

22 A. Yes.

23 Q. I'm going to hand you what's been marked as
24 Exhibit Number 14. It's a series of three photographs.
25 Let's look at the top one first. And what does that

1 represent?

2 A. Looking out from my kitchen window out towards
3 the railroad tracks and Bates Road.

4 Q. So am I looking at the railroad track way in the
5 back here?

6 A. Yes.

7 Q. Okay. And can you tell the jury how long ago
8 this photograph was taken?

9 A. Last winter.

10 Q. Okay. And the one in the middle represents,
11 what, the photograph?

12 A. That's -- we're looking from Bates Road down
13 towards Cambridge. This is the back of my property. The
14 water line will be to the left.

15 Q. So you have the woods behind your entire
16 property?

17 A. There's a row of -- there's a row of trees and
18 brush that runs the property line that separates the
19 railroad and my property.

20 Q. Okay. And then the third photograph on Exhibit
21 14 was taken when?

22 A. Last winter.

23 Q. And what does that photograph represent?

24 A. You're looking at the back view of our
25 property -- more of a right towards Cambridge. It's --

1 yeah, railroad tracks to your left -- the back corner, the
2 rear corner.

3 Q. So you're looking at an angle towards the
4 railroad?

5 A. That's correct.

6 Q. Which is very hard to see, correct?

7 A. Yes.

8 MR. BAHRET: Objection.

9 A. There's a pond now right behind the fence.

10 Q. And I'm going to --

11 THE COURT: If there was an objection, which was
12 faint, it's overruled.

13 BY MR. ROBON:

14 Q. I'm going to hand you what we've marked as
15 Exhibit 15 and ask you to tell the jury who is in that
16 picture?

17 A. It's me.

18 Q. That's you when you were a young child?

19 A. Yes.

20 Q. Do you remember how old you would have been?

21 A. Probably eight years old, maybe.

22 Q. Okay. And that's in your backyard?

23 A. Yes, that's --

24 Q. With the train in the background?

25 A. Yes, the corner of the back property. That's --

1 that's before the pond was put in.

2 Q. Okay. And has that area, if we went and looked
3 at that same area today, is it grown up?

4 A. Vegetation wise, yes, yes, very much so.

5 Q. You indicated during your deposition that the
6 railroad manhole that existed a couple hundred, maybe
7 300 feet south of Bates Road, you were familiar with it?

8 A. Yes.

9 Q. And can you come over here, we'll give you a
10 microphone, and show the jury -- we've drawn a map here,
11 Bates Road is -- let's see you've got to have a seat over
12 here. Bates Road is over this way, correct, kind of off
13 the map a little bit?

14 A. Yes, that's correct.

15 Q. And this is the manhole that you're familiar
16 with?

17 A. Yes.

18 Q. And would you tell the jury the significance of
19 that manhole for the property owners that are on Bates
20 Road?

21 A. Our septic tank lines.

22 THE COURT: I'm sorry I can't hear.

23 A. Our septic tank lines from three houses ran to
24 that point, ran down to that point.

25 BY MR. ROBON:

1 Q. So the septic tanks ran down to that manhole and
2 then that -- were you aware that that manhole then crossed
3 over under the old terminal tracks into this ditch?

4 MR. BAHRET: Your Honor, I object to the leading.

5 MR. ROBON: I'll rephrase the question.

6 THE COURT: Thank you.

7 BY MR. ROBON:

8 Q. Do you know where the water went after it went
9 into the manhole that is shown here on Exhibit Number 6?

10 A. It went into the railroad ditch.

11 Q. Okay. Along here?

12 A. Yes.

13 Q. And how do you know that?

14 A. I was told that.

15 Q. Okay. And when you were a child did you play on
16 that railroad property?

17 A. We used to hike down there.

18 Q. Okay. Did you actually see the manhole and the
19 water outlet?

20 A. Yes. Yes.

21 Q. Okay.

22 A. Well, I never actually saw the pipe that ran into
23 the ditch.

24 Q. Right. But you knew it was there?

25 A. Yes.

1 MR. BAHRET: Objection.

2 MR. ROBON: You can take your seat back, please.

3 THE COURT: Well, unless there's a foundation for
4 him expressing the view that he knew it was there since he
5 didn't see it, I'll sustain the objection and the jury will
6 be asked to disregard the answer to that question and the
7 question as well.

8 BY MR. ROBON:

9 Q. Is it a fact that in addition to the septic
10 system's draining into that manhole, the surface water --

11 MR. BAHRET: Objection.

12 MR. ROBON: I'll rephrase the question.

13 BY MR. ROBON:

14 Q. What other water drained into the manhole on the
15 railroad property, to your knowledge?

16 MR. BAHRET: Your Honor, I object. There's no
17 foundation that he knows.

18 THE COURT: Well, let's hear what his answer is,
19 and then we'll decide, maybe he'll say he doesn't know.

20 A. Well, the whole train rolls down to that point.
21 It's almost like a natural drainage. And that is what my
22 great aunt told me who owned that section of the property.

23 MR. BAHRET: Objection.

24 THE COURT: I'm going to sustain that objection.
25 We can't have you testifying about what somebody told you.

1 That's hearsay. So just a moment.

2 BY MR. ROBON:

3 Q. You have to tell us what you know. Do you know
4 that the train drains towards the manhole?

5 A. Yes.

6 Q. And eventually there was sanitary sewers put in
7 on Bates Road?

8 A. Yes.

9 Q. Were there any other areas behind Bates Road and
10 your property and your neighbor's property for your service
11 water to drain, other than into that manhole on the
12 railroad property, to your knowledge?

13 A. Not to my knowledge.

14 Q. I have nothing further.

15 THE COURT: Thank you.

16 Do you want to cross examine?

17 MR. BAHRET: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. BAHRET:

20 Q. Good morning, Mr. Sumner.

21 A. Good morning.

22 Q. My name's Bob Bahret. I represent the City of
23 Toledo.

24 Why did you put the pond in?

25 A. That was my neighbor, Triskel put the pond in.

1 It was after the sale of the property, after my aunt's
2 death, great aunt's death.

3 Q. Do you know why she put a retention pond in?

4 A. That's more of a recreational -- just a swimming
5 pond.

6 Q. Okay. Would you agree, sir, that your property
7 was not affected by the water main project?

8 A. That's correct.

9 Q. Would you agree they didn't cut down -- whoever
10 the contractor was, nobody cut down anything on your
11 property?

12 A. No.

13 Q. Would you agree -- you don't have any evidence or
14 any information that anything was cut down on Cambridge?

15 A. I don't know anything about that.

16 Q. Okay. In fact, you went out on the railroad
17 right of way and you -- after the project was started and
18 you looked down the fence line, correct?

19 A. Yes.

20 Q. And there used to be a railroad fence that whole
21 length down there, correct?

22 A. It still is.

23 Q. And would -- what it looked like to you is that
24 everything on the railroad side of the fence was cleared
25 and nothing on the other side of that fence was cleared?

1 A. Would you repeat that, please?

2 Q. What it looked like to you, when you looked down
3 the fence, like was that the stuff -- if you're at your
4 property looking towards Cambridge, everything left of the
5 fence is cleared, nothing to the right of the fence was
6 cleared?

7 A. Oh, okay, yes, that's correct.

8 Q. All right. And the last time you ever paid any
9 attention to that manhole was back after you got hooked up
10 when your septic -- when your sewage didn't go in there
11 anymore?

12 A. That's right, after we cut the lines off.

13 Q. And that was some --

14 A. Back in the early 90s.

15 Q. So at least 15 years before this project,
16 correct?

17 A. Correct.

18 Q. Now, you don't have any idea how water would get
19 into that manhole, do you?

20 A. Well, it had to go through the save -- where our
21 pipes connected, our septic tank lines connected to it.
22 There was one pipe that ran into that manhole cover,
23 whatever. It would have had to have gotten through there.

24 Q. What I'm getting at -- maybe I asked a poor
25 question. There's no drain near the manhole, correct?

1 A. Correct.

2 Q. So if the water is going into that manhole, the
3 water's coming from somewhere far away, correct?

4 A. Well, that's correct.

5 Q. And where it's coming from, you don't know?

6 A. I have no idea, really.

7 Q. You haven't noticed any additional water or
8 anything behind any of these properties, have you, since
9 the water main project was done?

10 A. I never noticed anything.

11 Q. I mean, there was water that would typically pond
12 back near that manhole and over towards Cambridge for as
13 long as you've been alive?

14 A. That's true, after the -- after snow melts and so
15 forth.

16 Q. And after a rain?

17 A. Yeah, that's correct.

18 Q. Thank you, sir.

19 THE COURT: Any redirect?

20 MR. ROBON: Nothing further.

21 THE COURT: Thank you. You may step down,
22 Mr. Sumner.

23 Next witness.

24 MR. BAHRET: Your Honor, I feel awkward with my
25 back to the jury. Where do most people stand.

1 THE COURT: At the end of the jury box.

2 (A brief discussion was had off the record.)

3 THE COURT: Or you stand in the middle of the
4 courtroom which is a bit cluttered right now.

5 MR. BAHRET: Thank you.

6 Was herein, called as if upon examination, was by
7 me first duly sworn, as hereinafter certified, and said as
8 follows.

9 DIRECT EXAMINATION

10 BY MR. ROBON:

11 Q. Would you introduce yourself to the jury and tell
12 the jury where you live?

13 A. My name is Kevin Stawinski. I live in Cambridge
14 subdivision, 30295 Jacqueline Place.

15 Q. And is that known as lot number 7?

16 A. No.

17 Q. Is it the second lot in from the cul-de-sac?

18 A. It is, yes.

19 Q. And you -- your driveway faces across the street
20 and the railroad's behind it?

21 A. That's correct.

22 Q. Okay. And how long have you lived there, Kevin?

23 A. A little over four years now.

24 Q. And did you build a home there?

25 A. Yes.

1 Q. And what do you do for a living?

2 A. I am in medical sales.

3 Q. And do you have a family?

4 A. Yes, I do, a wife and a son.

5 Q. And how old?

6 A. He's six years old.

7 Q. And would you describe for the jury how it was to
8 live in the Cambridge subdivision before the city started
9 the improvement on the railroad property?

10 A. You know, living in Cambridge was beautiful. I
11 mean, it was pristine. It was serene, just a very
12 beautiful place to live. There were large plush trees, you
13 know, that had very, you know, a lot of value to them, you
14 know, not only to the subdivision itself, but, you know, to
15 me personally, it did, as well.

16 Q. When you looked out of your driveway, what did
17 you see?

18 A. You're talking before the damage had been done?

19 Q. Yes, before -- before April of 2006?

20 A. I saw a bunch of large plush, plush trees that
21 when in full foliage, were very beautiful trees, very old
22 mature, tall trees.

23 Q. And what do you see today?

24 A. Graffiti-laden trains from time to time. You
25 know, there's one or two trees, but certainly the trees --

1 the trees are all gone now.

2 Q. When the machines were cutting out the trees, did
3 you see the machines?

4 A. Yes.

5 Q. I'm going to put up on the board here Exhibit
6 Number 16 and ask if you can tell the jury what that
7 instrument is or what that machine is?

8 A. It looks like a feller buncher.

9 Q. And how do you know what a feller buncher is?

10 A. Well, my six-year-old son actually has a keen
11 interest in heavy equipment and stuff, and we watch a lot
12 of the PBS shows, John-Deere-type stuff, and I actually
13 learned a little something myself by watching it.

14 Q. Is that the machine or type of machine that you
15 saw cutting the trees on the railroad right of way and also
16 on the Cambridge subdivision?

17 MR. BAHRET: Objection, Your Honor.

18 A. Very sim --

19 THE COURT: Woah, woah. Time out, everybody take
20 a breath.

21 The basis for your objection?

22 MR. BAHRET: He just asked this witness if he saw
23 trees cut on the Cambridge property. This witness has no
24 foundation to be able to say that.

25 THE COURT: I think you can rephrase the

1 question. I'll sustain the objection.

2 MR. ROBON: I'll rephrase it.

3 BY MR. ROBON:

4 Q. With regard to the cutting of trees behind the
5 Cambridge subdivision, is this one of the machines that you
6 saw doing it?

7 A. Yes.

8 Q. Okay. And do you see the sign, it says stay back
9 300 feet?

10 A. Yes.

11 Q. Would you come over here and look at the map
12 here, which is Exhibit Number 8?

13 MR. BAHRET: Your Honor, could we approach?

14 THE COURT: If you must.

15 MR. BAHRET: I must.

16 (A side-bar conference was had off the
17 record.)

18 BY MR. ROBON:

19 Q. Would you indicate to the jury how far it is from
20 your lot here to where the clearing was? And you'll see
21 the depth of the lots.

22 A. 220 feet.

23 Q. And the right of way is probably, what, 60 feet?

24 MR. BAHRET: Objection.

25 A. That's a good estimate.

1 THE COURT: Sustained. Jury will disregard the
2 answer.

3 BY MR. ROBON:

4 Q. You can take your seat.

5 I want you to take a look at Exhibit 17. Let's
6 put it up this way. Is this a picture of the giant -- I
7 think they call it a "hydro axe," on the front here,
8 that -- with the big blades?

9 A. Yes.

10 Q. Okay. And is that what you saw there cutting
11 these trees down?

12 A. It looks very much like it, yeah.

13 Q. Okay. I'm going have you take a look at Exhibit
14 20. This is a photograph taken by Ric Man Construction on
15 April 5 of 2006 before the cutting. And the railroad is on
16 the left up here, and this is the -- where the old tracks
17 used to be. Do you remember what -- what was this area
18 used for, what did you see people doing here?

19 MR. BAHRET: Your Honor, just so the jury knows
20 this is not behind Cambridge.

21 THE WITNESS: Marve, can you repeat the question?

22 BY MR. ROBON:

23 Q. Yeah. This path that existed here where the old
24 track was removed?

25 A. Yeah.

1 Q. Did you -- was that used, did you see people on
2 that path?

3 A. Yes.

4 Q. You mentioned to me they were walking their dogs
5 and things like that?

6 A. Absolutely.

7 Q. Okay. My question is, you see the heavy brush
8 here on the right side -- if you have to you can come over
9 here and take a better look?

10 THE COURT: It should be on your screen.

11 THE WITNESS: I can't see the laser pointed.

12 MR. ROBON: On it doesn't show up.

13 BY MR. ROBON:

14 Q. You see this brush area here?

15 A. Yes.

16 Q. Is that what you looked at when you lived over
17 here?

18 A. All the heavy brush?

19 Q. Yeah.

20 A. Yes.

21 MR. ROBON: Now, I'm putting on Exhibit Number
22 30, Your Honor. I don't know why there's a glare on it
23 over here on the side.

24 BY MR. ROBON:

25 Q. Can you identify that photograph?

1 A. Yeah, that -- that's looking at the railroad
2 probably from standing on my porch or in my driveway
3 somewhere.

4 Q. Okay. And that photograph adequately depicts
5 what is there today?

6 A. Yes.

7 THE COURT: That photo was taken when, please?

8 MR. ROBON: I think this was taken in summer of
9 2007, Your Honor.

10 THE COURT: Thank you.

11 BY MR. ROBON:

12 Q. I'm going to hand you what we've marked as
13 Exhibit 43.

14 MR. BAHRET: Marve, could you try to adjust the
15 lens so it's going straight down?

16 MR. ROBON: Maybe that's what it's doing.

17 MR. BAHRET: I'm not sure, but I'm just wondering
18 if it's catching the light.

19 MR. ROBON: Yours truly is not too mechanically
20 inclined.

21 BY MR. ROBON:

22 Q. I pulled up Exhibit 43. Is this a depiction of
23 what the back of the subdivision looked like before any
24 cutting took place?

25 MR. BAHRET: Your Honor, I object that is not --

1 A. Yes.

2 MR. BAHRET: -- the back of the subdivision.

3 THE COURT: Let's have an identification or
4 authentication of the photograph, please, time, place.

5 BY MR. ROBON:

6 Q. Before the cutting of the trees when you stood on
7 the cul-de-sac in your subdivision, is this what you looked
8 at?

9 A. Yes.

10 Q. And is this what you still look at today at the
11 back of the cul-de-sac, still there?

12 A. Yes.

13 Q. And does that adequately depict the foliage that
14 you have which would be at the end of the cul-de-sac over
15 here? That would be at the end of the cul-de-sac over
16 here?

17 A. Yes, that's correct.

18 THE COURT: And this photo was taken about when?

19 MR. ROBON: This was taken also in 2007.

20 THE COURT: Thank you.

21 BY MR. ROBON:

22 Q. I put up on the screen Exhibit 91. Is this what
23 was up against the railroad property in 2006 prior to the
24 cutting?

25 MR. BAHRET: Objection. Not only is he leading,

1 but, again, that's not a picture from the -- between
2 Cambridge and the railroad.

3 THE COURT: Who took these photographs?

4 MR. ROBON: These were taken by me and
5 Mr. McCarthy, Your Honor.

6 MR. BAHRET: And he wasn't retained until after
7 the trees are gone, so obviously, that's not representative
8 of what's behind Cambridge.

9 MR. ROBON: And I think -- Mr. Laskey, did you
10 take this one?

11 THE PLAINTIFF: Yes.

12 MR. ROBON: I think Mr. Laskey took this one
13 beforehand.

14 MR. BAHRET: Wait a minute.

15 THE COURT: Gentleman, your comments are toward
16 me, please. Thank you.

17 MR. BAHRET: I apologize.

18 THE COURT: As I indicated at the beginning of
19 the trial and I'll repeat it now, ladies and gentlemen,
20 comments of counsel are not evidence in the case.

21 Would it be more efficient to have the person who
22 took these photographs testify about them if that person's
23 going to testify such as Mr. Laskey.

24 MR. ROBON: Well Mr. Stawinski lives there, Your
25 Honor.

1 THE COURT: I understand he was, but if he wasn't
2 there when they were taken, he can't testify that this
3 photograph when it was taken or what it was taken of.

4 MR. ROBON: Well, ask -- I ask him do you
5 recognize this photograph.

6 THE COURT: Go for it.

7 A. No, I don't.

8 MR. ROBON: Okay.

9 BY MR. ROBON:

10 Q. But is it a similar depiction of what you looked
11 at --

12 MR. BAHRET: Objection.

13 MR. ROBON: -- across the way?

14 THE COURT: I'll sustain the objection. Ask the
15 jury to disregard the answer since he could not identify
16 the photograph.

17 BY MR. ROBON:

18 Q. Would you tell the jury what is it like to live
19 today in the Cambridge subdivision?

20 A. Living there today is extremely frustrating.

21 Q. Can you explain how?

22 A. Yes. Well, first of all, the damage that's been
23 done has severely affected the value of my home.

24 Q. And how is that?

25 A. Well, after we built the house, we were going to

1 go ahead and put a pool, in finish the basement, so we had
2 an appraisal done on the house by Fifth Third. I forget
3 the exact value, but it was around 630,000 because they
4 loaned me off the value of the home what it is based on.
5 And that number came back at 630. And we have subsequently
6 had the house on the market over the last three years, and
7 I believe we've had one offer in the neighborhood of about
8 \$400,000. So in that aspect, you know, I woke up one day
9 with a house worth \$630,000, now it's worth \$400,000
10 because of the damage that's been done.

11 It's also frustrating in that, you know, the
12 trains are much more audible than they were. The trees
13 used to absorb a lot of the noise. You can clearly hear
14 the trains a lot more.

15 And without question, they're much more visible.
16 Before you wouldn't even have noticed the trains. Now
17 they're very visible, so.

18 Q. Did you receive, as a property owner in the
19 Cambridge subdivision, any notice of a public improvement
20 in the railroad right of way?

21 MR. BAHRET: Objection, Your Honor.

22 A. If I would --

23 THE COURT: I'll overrule. He may testify if he
24 received anything.

25 A. Had I received anything at all in regards to that

1 project being done, I will not have chosen to build there.

2 BY MR. ROBON:

3 Q. Okay.

4 A. So the answer is, no, I did not.

5 Q. And just one day the trees are gone?

6 A. Literally within one day.

7 Q. What would you like to see done at the Cambridge
8 subdivision?

9 MR. BAHRET: Objection.

10 THE COURT: I'm not sure where this is going. It
11 seems a bit --

12 MR. ROBON: I'll rephrase it.

13 THE COURT: Thank you.

14 BY MR. ROBON:

15 Q. To -- to cure the problems for you and other
16 property owners in the Cambridge subdivision, what would
17 you recommend or like to see be done along the railroad
18 tracks?

19 MR. BAHRET: Your Honor, I object. He is not a
20 party to this case.

21 MR. ROBON: He's an affected property owner, Your
22 Honor.

23 MR. BAHRET: It doesn't make him a party to the
24 case.

25 THE COURT: I understand. Take a breath

1 gentleman.

2 I'll overrule the objection. He may answer.

3 A. Well, short of going back in time and -- and
4 standing those trees back up right, which is impossible, I
5 would like to see restitution made with the trees, with a
6 barrier, I don't know if you can do it with trees to that
7 magnitude and that beauty that have been destroyed, to that
8 height with that amount of value, but clearly there needs
9 to be something done in terms of some sort of barrier to
10 make it the trains less visible. I'm not asking for any
11 more than what was there, but to have something of equal
12 value there to create the value that I once had in my
13 house, personally, let alone Cambridge subdivision. I
14 think that would be a fair, you know, fair to ask for that.

15 Q. Okay. Nothing further. Thank you.

16 THE COURT: Thank you.

17 You may cross-examine.

18 MR. BAHRET: Thank you.

19 CROSS EXAMINATION

20 BY MR. BAHRET:

21 Q. Good morning, Mr. Stawinski.

22 A. Good morning.

23 Q. My name's Bob Bahret. I represent the City of
24 Toledo.

25 Sir, when did you build the house?

1 A. About four, four and a half years ago.

2 Q. So in the year 2003 or four?

3 A. I'm not good with numbers, but that's pretty
4 accurate.

5 Q. Okay. And back then it appraised at 630?

6 A. According to Fifth Third Bank, yes.

7 Q. Okay. Are you aware of the fact that anybody
8 that appraises their house now will get a lower appraisal
9 than what they got in 2004?

10 A. Well, at the time I had the appraisal done, we
11 were probably within the greatest housing boom ever.

12 Q. That's my point. Are you aware that we're not in
13 the greatest housing boom ever now?

14 A. I'm very well aware of that.

15 Q. And are you aware of the fact that because of
16 that appraisals are, not only are sales down, but the value
17 of a house is down?

18 A. I am aware of that, yeah.

19 Q. Okay. Now, your house is lot 7; is that right?

20 A. Yes.

21 Q. And so across from you is 12 and to your right
22 nine, ten, and 11?

23 A. I can't see the picture, but I'm going to have to
24 assume you're correct in saying that.

25 Q. All right. You're not saying that all these

1 trees that you described as suddenly being gone are on
2 Cambridge property, you're not a surveyor, correct?

3 A. No, that's correct.

4 Q. And in fact, are you aware of the fact that even
5 the Old Granite owners acknowledge that every single tree
6 removed from -- in this half of the development behind it,
7 you can't see where I'm pointing, can you?

8 A. No, I can't.

9 Q. Sorry. I either block you or block the jury. In
10 this half of the development, the trees that were removed,
11 nobody contends were on Old Granite property or Cambridge
12 property, did you know that?

13 A. I don't, no.

14 Q. Okay. And you'd agree that if that's true, you'd
15 still see the train, correct?

16 A. What do you mean?

17 Q. The barrier, as you called it, would be gone. In
18 fact, it is gone even though trees weren't removed from
19 Cambridge, at least on that half, correct?

20 A. That's correct.

21 Q. Okay. You don't own any of the trees that were
22 removed, do you?

23 A. No.

24 Q. And so far as you know, Cambridge doesn't own any
25 of those trees and never did?

1 A. When I built, I didn't know where those trees
2 lied.

3 Q. Okay. You don't have anybody that lives
4 immediately next door to you, do you?

5 A. No.

6 Q. In fact, how many people have moved into that
7 neighborhood since you did?

8 A. I think two, two families.

9 Q. Two. And when was the last one?

10 A. Probably a couple years ago.

11 Q. How many lots, if you know, how many lots sold in
12 that subdivision in the two years before -- before?

13 A. I don't know.

14 Q. Trees -- would it surprise you if the answer was
15 zero?

16 A. No.

17 Q. Okay. And how many people built houses with
18 their backyard up to those tracks?

19 A. One.

20 Q. And that's the spec house owned by Old Granite,
21 correct?

22 A. Yes.

23 Q. How many outside customers built the house with
24 their backyard touching the railroad right of way?

25 A. Other than spec house, none. None.

1 Q. Zero. And in fact, you selected a lot on -- not
2 abutting the railroad tracks?

3 A. Yes.

4 Q. Why?

5 A. My wife picked it out.

6 Q. Did you ever ask her why she didn't pick one out
7 that abuts the railroad tracks?

8 A. No. But at that time had she done that, I would
9 have been willing to appease her.

10 Q. Okay. You're not claiming you couldn't see the
11 train before the trains gone back there?

12 A. Very minimally.

13 Q. You could see them, though, correct?

14 A. Yes.

15 Q. And obviously you could hear them, correct?

16 A. Not to the magnitude you can now.

17 Q. Did you hear my question? Could you hear them?

18 A. Yes.

19 Q. In fact, they blow a whistle when they approach
20 Bates Road from either direction, correct?

21 A. I don't know where they blow their whistle, but I
22 can hear it.

23 Q. I mean, anybody with reasonable hearing is going
24 to hear the whistleblowing, correct?

25 A. I just said yes, I hear their whistle.

1 Q. Okay. Thanks.

2 THE COURT: Any redirect?

3 MR. ROBON: Yes.

4 REDIRECT EXAMINATION

5 BY MR. ROBON:

6 Q. Kevin, in a market that's as bad as depicted by
7 Mr. Bahret, did removal of the trees further exasperate the
8 value of your house in a lower manner?

9 A. Well, the only way to judge that is to, you know,
10 listen to the comments of the realtors as the people who
11 have come through my house have commented on the house.

12 Q. What are those comments?

13 A. The only thing --

14 MR. BAHRET: Objection. Objection.

15 THE COURT: Excuse me. There's an objection.

16 That will be sustained. That's hearsay. He
17 cannot comment on what others have told him.

18 BY MR. ROBON:

19 Q. What do you believe in your own mind is the
20 reason that your home hasn't sold?

21 A. Well, what I know to be true is that it's all
22 based on the damage that's been done by the construction.

23 Q. The removal of the trees?

24 A. The removal of the trees, yes.

25 MR. ROBON: Nothing further. Thank you very

1 much.

2 THE WITNESS: Sure.

3 RECROSS EXAMINATION

4 BY MR. BAHRET:

5 Q. I thought I heard you say the house has been on
6 the market three years?

7 A. Yes, on and off, not consistently.

8 Q. And that includes time before the trees were
9 removed, correct?

10 A. Yes.

11 Q. Why didn't it sell then, sir?

12 A. I don't know.

13 Q. Thank you.

14 THE COURT: You may step down. Thank you.

15 Plaintiff may call next witness.

16 Was herein, called as if upon examination, was by
17 me first duly sworn, as hereinafter certified, and said as
18 follows.

19 DIRECT EXAMINATION

20 BY MR. ROBON:

21 Q. Tom, would you introduce yourself to the jury,
22 tell them where you live, about your family.

23 A. Thomas Taylor. I live in Monclova, Ohio. It
24 would be -- I don't know if you're familiar with Monclova.

25 Q. You've got to speak up.

1 A. Monclova, Ohio. That's about Waterville. I've
2 lived out there for 25 years, and I have five kids, and
3 they all went to Anthony Wayne High School. And I'm a
4 general contractor. My wife and my son and I have a
5 general contracting company. Now we are in Columbus
6 building tenant build out, lease spaces in strip centers.

7 Q. And this is your first time ever testifying in a
8 lawsuit like this?

9 A. Yes, it is.

10 Q. I know you're nervous. We're used to it. Jury
11 he -- so if you need a glass of water or anything, just
12 speak up.

13 Would you tell the jury how old you are?

14 A. Fifty-eight.

15 Q. Can you tell the jury when you first met Jack
16 Laskey?

17 A. I think it was in 1999.

18 Q. And can you tell the jury how you met him and how
19 you went into business with him?

20 A. I found a piece of property in Perrysburg on the
21 river, and I sold that piece of property, and Jack's wife
22 Greta ran Port Lawrence Title, and they did the title work.
23 And at that time I was looking at this other piece of
24 property on the river, Cambridge, this subdivision, and I
25 was talking to Greta, Jack's wife about this property, and

1 she introduced me to Jack.

2 Q. So you saw this vacant piece of land that you
3 thought was, what?

4 A. It would be a good development.

5 Q. Upscale development?

6 A. Yeah.

7 Q. Your background, you went to high school?

8 A. Yes.

9 Q. And what did you do after that, as far as
10 education?

11 A. Well, I went to -- I got into plumbing for a few
12 years. And I became a plumbing contractor up until, I
13 can't remember.

14 Q. A few years ago?

15 A. Yeah. And then general contracting after that.

16 Q. And when you met Mr. Laskey, there was a decision
17 to form a limited liability company called Old Granite
18 Development LTD?

19 A. Yes. I think it was --

20 Q. Was it called something before that?

21 A. Yes, it was.

22 Q. Country?

23 A. Country French Developers and then they changed
24 the name to Old Granite.

25 Q. And what percentage of ownership do you have in

1 Old Granite?

2 A. 50 percent.

3 Q. Is this the first subdivision that you developed
4 or have you had experience in other subdivisions?

5 A. No. I had two other ones that I was involved in.
6 One was up in Sylvania with Mark Lavoy, and the Stanley's
7 were involved in that one.

8 Q. Were they successful?

9 A. Yes, they sold out. They were villas.

10 Q. Tell the jury what you liked about the Cambridge
11 vacant land when you saw it.

12 A. Well, the location, it was in a real good
13 location, and the ground was -- it was a good piece of
14 ground. It wasn't -- it was an easier development. The
15 utilities were right there. And the -- well, it had -- it
16 was the storm -- a lot of time, utilities are hard to get
17 sometimes.

18 Q. You mean like sanitary sewers?

19 A. Sanitary water and storm drains, sometimes
20 they're a problem. In Sylvania we had a problem getting
21 the storm water off-site. In Cambridge everything was
22 on-site.

23 Q. Did you hire an engineering firm to layout the
24 construction plans?

25 A. Yes, Peterman and Associates out of Findlay.

1 Q. And they're where?

2 A. Findlay.

3 Q. Did you kind of oversee the installation of the
4 utilities and the road and the drainage and things like
5 that?

6 A. Yes, I -- I contacted the engineering firm,
7 Peterman and went through the zoning change and the layout.
8 There was quite a few different layouts that were by the
9 time we got it final, final approval. And then I got the
10 final plans, and then I put that out to bid to different
11 contractors, and it was awarded to TNS. And then we
12 started the development, and I was on a daily basis on site
13 with them. And went over all his invoices and made sure
14 they got paid.

15 Q. Could you come over here for a moment. I can
16 show you some documents. This is Exhibit Number 1. This
17 is an aerial that depicts the Cambridge subdivision taken
18 in 2006 before the tree cutting?

19 A. Uh-huh.

20 Q. You have to speak up?

21 A. Yes.

22 Q. Okay. Do you see the line of trees here, two
23 lines of trees?

24 A. Yes.

25 Q. Can you explain to the jury those two lines of

1 trees, what -- what is there?

2 A. Well, it was -- it's --

3 THE COURT: Let's give Mr. Taylor a microphone,
4 please.

5 Thank you.

6 BY MR. ROBON:

7 Q. I know you're nervous. Just take your time.
8 You've got to hold it up close.

9 A. It was about 20-foot of -- I don't know how to
10 explain it -- trees and briars and brush. It would -- I
11 would say 20 or 25-foot high from one end of the property
12 to the other, and it was on the property line, the back
13 part of our property and also on the railroad property. I
14 think there was another -- there was an active train and
15 still is. And there was an abandoned tracks. And between
16 the two tracks was another row of brush and trees. It was
17 kind of like a buffer between our property and the trains.

18 Q. And did that buffer convince you that you should
19 purchase this property?

20 MR. BAHRET: Objection.

21 MR. ROBON: I'll rephrase the question.

22 THE COURT: Thank you.

23 BY MR. ROBON:

24 Q. Did that buffer have an impact in your decision?

25 A. Yes, it did.

1 Q. And can you tell the jury what you are trying to
2 accomplish with this particular subdivision, what kind of
3 market, who were you marketing to?

4 A. They were higher-end houses that just like the
5 neighbors on both -- down in the Perrysburg -- and I don't
6 know, it was a single-family housing, but it was an
7 association that --

8 Q. Homeowners association?

9 A. Homeowners association. It was a private gated
10 community, upscale.

11 Q. And would you tell the jury what's across the
12 street from the entryway here. What is over here on the
13 other side of River Road?

14 A. Well, it's like maybe, I'm guessing, 15-acre lots
15 in a single-family house.

16 Q. Mansions?

17 A. Mansions, big stone old mansions.

18 Q. We have a graphic of the Cambridge subdivision,
19 and it shows --

20 THE COURT: Is that Number 8? I'm sorry.

21 MR. ROBON: I'm sorry, this is Number 6, Your
22 Honor. Thank you.

23 BY MR. ROBON: You were -- you were involved in the
24 drainage plans for the subdivision, correct?

25 A. Yes, I was.

1 Q. And would you tell the jury what the drainage
2 purpose or plan was?

3 A. The engineer drawings Peterman drew were
4 specifically to drain this piece of property only.

5 Q. Cambridge subdivision?

6 A. Cambridge subdivision.

7 Q. And did you install catch basins at the back near
8 the railroad?

9 A. Yes, we did.

10 Q. And what was the purpose of that?

11 A. To drain the back piece of that -- our ground.

12 Q. So it would be dry?

13 A. Yes.

14 Q. Okay. Now, what has happened on that site
15 that -- you were out there several different times since
16 the city installed the water main, what -- what's occurred
17 on your Cambridge subdivision lots?

18 A. Ponding by the railroad tracks behind lot 16, 15,
19 13 like that, the water's still there. Our drains don't
20 take that away.

21 Q. And why don't they take it away?

22 A. They're not designed to.

23 Q. They're designed only to handle the water from
24 your own subdivision?

25 A. Correct.

1 Q. You believe the water is coming from someplace
2 else?

3 A. Yes.

4 MR. BAHRET: Objection.

5 MR. ROBON: I'll rephrase the question.

6 BY MR. ROBON:

7 Q. Where is the water coming from?

8 MR. BAHRET: Objection.

9 A. Outside.

10 THE COURT: Let's see if we can establish a
11 foundation for him to give that opinion.

12 BY MR. ROBON:

13 Q. Have you been out there when there's been
14 ponding?

15 A. Yes.

16 Q. And where did you see the water coming from?

17 MR. BAHRET: Objection.

18 THE COURT: Overruled.

19 BY MR. ROBON:

20 Q. You can answer.

21 A. Off site.

22 Q. Would you show the jury with the little push
23 button where you saw the water coming from?

24 A. It comes from this piece of property down the
25 tracks and from this piece of property here, and it's

1 ponding up in this area.

2 Q. And does this Exhibit Number 6 fairly depict the
3 subdivision, the drain tile that is in the railroad right
4 of way where the manhole was, the two ditches, and the
5 railroad tracks?

6 A. Yes, it does.

7 Q. As it exists today?

8 A. Yes.

9 Q. I'm going to put up Exhibit Number 4. This is a
10 graphic of the Cambridge subdivision standing on Ford Road
11 looking towards Bates Road, with the house here being on
12 lot 15. Can you tell us, you built this spec home or
13 supervised the building of it?

14 A. Yes, I did.

15 Q. And what is this here?

16 A. Walk-out basement.

17 Q. And can you tell the jury why you designed a
18 walk-out basement?

19 A. They're more desirable to have a walk-out
20 basement.

21 Q. Okay. And what did you see when you walked out
22 of this basement, is this what you saw?

23 MR. BAHRET: Objection.

24 THE COURT: Overruled. He may answer.

25 BY MR. ROBON:

1 Q. After the house was completed in late '05 or
2 early 2006?

3 A. Trees and brush and it was covered up. I
4 couldn't see much of the tracks or the railroad ballast.

5 Q. Could you see just the top of the trains?

6 A. Yes.

7 Q. And Exhibit Number 5 is a graphic using the same
8 view, but today it depicts flooding in the rear of the yard
9 in lot 15 and others, and that's accurate?

10 MR. BAHRET: Objection.

11 THE COURT: Basis is leading?

12 MR. BAHRET: It's clearly leading.

13 THE COURT: Sustained.

14 MR. ROBON: I'll rephrase it.

15 BY MR. ROBON:

16 Q. Tell the jury what's on the back of lot 15, 14,
17 13, and 12 today.

18 A. Standing water.

19 Q. Is it worse at some times than others?

20 A. Yes, heavy rain, it's --

21 Q. And what happened to the trees that were in the
22 back of the property?

23 A. They were all cut down when the city put the
24 water main down the tracks.

25 Q. Now, you and I were out there Saturday, correct?

1 A. Yes.

2 Q. And we saw a corner monument, concrete set in the
3 ground?

4 A. Yes.

5 Q. Okay. I want to take a look at Exhibit 6. Was
6 that corner monument right here on the corner of lot 16?

7 A. Yes.

8 Q. And then we also found one down here on the
9 corner of lot 9?

10 A. Yeah.

11 Q. And the railroad fence was inside those
12 monuments, was it not?

13 A. Yes.

14 MR. BAHRET: Objection.

15 MR. ROBON: I'll rephrase the question, Your
16 Honor.

17 THE COURT: Thank you.

18 BY MR. ROBON:

19 Q. Tell us the location of the railroad fence in
20 comparison to the surveyor's monument.

21 A. The fence was on our property.

22 Q. And by how much?

23 A. By maybe 5 foot.

24 Q. And is it -- tell us what your belief is with
25 regard to the trees that were on the back of these lots,

1 the trees, brush, and brambles, who owned them?

2 A. I would say half of that was on -- most of that
3 was on the property line, right on the line. Half of it --
4 I'm saying half of it was on Cambridge and half of it was
5 on the railroad.

6 Q. Okay. And can you describe for the jury, was it
7 narrower at the bottom and higher at the top, how much did
8 it branch out?

9 A. It was narrower at the bottom, and there were
10 trees across the back of that property. And then it -- it
11 got thicker at the top, maybe 15 or 20 feet, pretty much
12 what's existing down the tracks right now.

13 Q. And when you and I were out there, we found a
14 chain-link fence along this side, didn't we, the
15 neighboring property?

16 A. Yes.

17 Q. And would you tell the jury how close the
18 railroad -- not the railroad, the city and its contractors
19 cut to that fence?

20 A. They cut right --

21 MR. BAHRET: I object.

22 THE COURT: Well, if you establish a foundation
23 he may answer.

24 BY MR. ROBON:

25 Q. We were there, correct?

1 A. Correct.

2 Q. Did they stay back eight or 10 feet?

3 MR. BAHRET: Objection.

4 BY MR. ROBON:

5 Q. Can you tell us how far they stayed from the
6 fence of the neighboring property?

7 A. Well, they -- it looks like today that -- that
8 brush was cut towards the tracks from that fence, and I
9 think that is the property line.

10 Q. Over here?

11 A. Yes.

12 Q. Okay. But the fence was barely visible?

13 MR. BAHRET: Your Honor, I mean, this is -- I
14 object.

15 MR. ROBON: I'll rephrase the question.

16 BY MR. ROBON:

17 Q. How difficult was it to see the chain-link fence
18 on this adjacent property when we were there a few feet
19 away from it?

20 A. Pretty -- you couldn't see the chain-link fence.

21 Q. And with -- why couldn't --

22 A. It was covered up with brush --

23 Q. -- you see it?

24 Okay.

25 A. -- about 20-foot high with trees.

1 Q. Now, this home that was constructed on lot 15, do
2 you remember what the cost of that home was?

3 A. No, I don't.

4 Q. Okay. To solve the water problem of the ponding
5 that's in the back of these lots, can you explain, as a
6 contractor, to the jury what most likely would have to be
7 done to drain this area in the back of lots 11, 12, 13, 14,
8 15, and 16?

9 MR. BAHRET: No foundation it's within his area
10 of expertise, Your Honor.

11 MR. ROBON: I'll rephrase it. I'll get the
12 background.

13 THE COURT: Thank you.

14 BY MR. ROBON:

15 Q. You have completed development working in the
16 past? And you have been concerned with drainage in the
17 past?

18 A. Yes.

19 Q. And you get estimates, correct?

20 A. Yes.

21 Q. And you've done excavating, I mean, had it done
22 for you?

23 A. Yes.

24 Q. And TNS did the whole project here?

25 A. Yes.

1 Q. Did you talk to TNS about solving this problem or
2 did Mr. Laskey?

3 A. I -- I have talked to him, Tad.

4 Q. And what have they indicated to you would need to
5 be done to alleviate the flooding problem?

6 MR. BAHRET: Objection.

7 THE COURT: It's hearsay. That's sustained.

8 BY MR. ROBON:

9 Q. What have you determined that needs to be done to
10 solve the flooding problem?

11 MR. BAHRET: Your Honor, there's still no
12 foundation he knows. That's why he hires the other people.

13 THE COURT: Take a breath. I'll sustain the
14 objection.

15 BY MR. ROBON:

16 Q. In your opinion as a contractor, property owner,
17 what will need to be done to alleviate the flooding
18 problem?

19 MR. BAHRET: Objection, same basis. There's no
20 foundation.

21 THE COURT: I agree.

22 MR. ROBON: I think as a property owner, Your
23 Honor, he's got a right to testify as to the value and how
24 he thinks his problem can be improved.

25 THE COURT: Certainly as a property owner he has

1 a right to testify as to value, but you're asking him for
2 an opinion with respect to the correction of a flooding
3 problem, and I believe unless there's some expertise he has
4 himself in that area, that's not an appropriate opinion
5 given the foundation testimony I've heard so far.

6 MR. ROBON: Your Honor, wouldn't this be an
7 exception to the hearsay exception under the business
8 identification rule of things that he's learned in the
9 course of his business talking with getting estimates as
10 part of a business process?

11 THE COURT: Boy, that's a new one on me. If that
12 were the case, you would have excluded a whole number of
13 people from your witness list. I don't believe that is an
14 appropriate exception. I'm happy to have any authority
15 that proves me wrong. I'm not aware of that.

16 MR. ROBON: Let me think of a proper question,
17 Your Honor.

18 THE COURT: Why don't we use this to take our
19 morning break?

20 It's 10:20. Ladies and gentlemen, we'll take --
21 how long would you like? Ten minutes, 15 minutes. Ten
22 minutes, 10 minutes which puts us at 10:35.

23 Please remember the rules and leave your notes on
24 your chair. Thank you.

25 (A brief recess was taken.)

1 MR. ROBON: Thank you, Your Honor.

2 BY MR. ROBON:

3 Q. I'm asking you to take a look at Exhibit Number
4 8. Can you tell the jury what this document is?

5 A. It's a layout of Cambridge subdivision. This is
6 a layout of Cambridge subdivision. It shows 22 lots, of a
7 private, gated community.

8 Q. And this is what you're half owner of?

9 A. Correct.

10 Q. You can take a seat now.

11 Before we took a morning break, I was attempting
12 to get an answer of what you thought needed to be done with
13 regard to the flooding problem. Did you indicate to The
14 Court when you were a tradesman what degree of level of
15 accomplishment that you received?

16 A. I was a master plumber. I held a master plumbers
17 license and sewer layers license in the city of Youngstown
18 and the city of Parma, Ohio and the surrounding counties.

19 Q. And would you indicate what a master plumber
20 does?

21 A. Installs -- installs pipes and has knowledge of
22 pipe sizing.

23 Q. Drainage?

24 A. And drainage.

25 Q. Have you ever been responsible for retention

1 pond?

2 A. Yes, I have. In Whitehouse, Ohio I built a
3 retainage pond and a metering system to meter the flood --

4 Q. What is a meter system so the jury understands on
5 the flow of water?

6 A. Retention ponds are to retain site water from
7 discharging into the creeks and rivers at a huge rate all
8 at once. They size the pipes to meter the flow of water so
9 it doesn't flood the creeks and rivers.

10 Q. So it stores it in the retention pond?

11 A. Correct.

12 Q. And then let's it out slowly?

13 A. Correct.

14 Q. I'm going to go back to my question. With regard
15 to clearing up the drainage problem or the water problem on
16 the Cambridge subdivision, could you tell the jury what you
17 believe needs to be done to cure that problem?

18 MR. BAHRET: Your Honor, there's still no
19 foundation. The fact that is he -- can follow plans and
20 install things doesn't make him qualified to design them.

21 THE COURT: Let me see counsel up here, please.

22 (A side-bar conference was had off the
23 record.)

24 MR. ROBON: You can answer the question. Do you
25 remember what it was?

1 A. Give me --

2 (Question was read back.)

3 A. The water needs to be -- there needs to be a
4 storm drainage system installed.

5 BY MR. ROBON:

6 Q. And how did you suggest going about doing that?

7 A. This would have to be engineered and -- and
8 it's -- and installed, but --

9 MR. BAHRET: I think he just proved my objection
10 and I'll renew it.

11 THE COURT: Well, this is a new question, and I
12 don't know, do you have experience with storm drainage
13 systems in and the engineering of them and the planning of
14 them and the installing of them?

15 A. No. But I -- all I know is what needs to be
16 done.

17 THE COURT: And you've indicated --

18 A. I know that.

19 THE COURT: -- in your prior answer what that is.
20 So we'll let the prior answer stand, and I'll sustain the
21 objection to this question.

22 BY MR. ROBON:

23 Q. When you say engineering needs to be done, an
24 engineer needs to come out and draw plans, correct?

25 A. Correct.

1 Q. Okay. How would they get under the road?

2 A. Jacqueline Place, which is the road that's in the
3 middle of the subdivision, if they have to get out to River
4 Road for the drain tank, they would have to bore under the
5 road because of the utilities that are already in place.

6 Q. Okay. And do you have an idea of what the cost
7 of a boring would be?

8 A. Yes.

9 Q. Can you tell the jury what that is?

10 A. Between 15,000 and 20,000.

11 Q. And you mentioned a retention pond and on the
12 subdivision, you have only one spot that is shown as open
13 space or green space. Is that where you would put the
14 retention pond?

15 A. I would assume that's where they would put it.

16 Q. And do you have experience in digging retention
17 ponds?

18 A. I have experience in having them installed for
19 me, yes.

20 Q. You did one in Whitehouse?

21 A. Yes, I did.

22 Q. What do you estimate the cost of a retention pond
23 in the Cambridge subdivision would be?

24 MR. BAHRET: Objection, Your Honor. He's not an
25 expert in that.

1 A. Ask me the question again.

2 THE COURT: The question is, do you have an
3 estimate of the cost of a retention pond in the Cambridge
4 subdivision, and the objection was raised to that. And do
5 you have experience in the cost? I'm asking the question
6 now, do you have experience in the cost or the building or
7 the planning of retention ponds?

8 A. Yes, I do. I installed one in Whitehouse on a
9 commercial piece of property.

10 THE COURT: The question then is, what do you
11 estimate the cost of a retention pond in the Cambridge
12 subdivision to be?

13 You may answer.

14 A. Thirty to \$40,000.

15 BY MR. ROBON:

16 Q. And --

17 A. Because of the situation on that site on and off
18 spoiled dirt hauling off.

19 Q. Could you give the jury an estimate of what the
20 engineering cost would be to design a system to drain the
21 water under the road into a retention pond eventually into
22 a storm drain out on River Road?

23 A. 15,000 -- 12 to 15,000.

24 Q. And then can you give the jury an idea of the
25 cost on a running foot basis of trenching and putting a

1 pipe in for drainage?

2 A. On that site, I couldn't honestly say --

3 Q. What?

4 A. -- because --

5 Q. What is the normal range?

6 A. It could run -- it could run a hundred dollars a
7 foot.

8 Q. A -- per linear foot?

9 A. Yes, sir, per linear foot. There's a lot of
10 factors, depth, premium fill.

11 Q. What do you expect the depth would have to be on
12 this property, since you're going from --

13 Let me ask the question this way: Would you come
14 over here again, Tom. Show the jury where the lowest part
15 of the subdivision is so they can see over here.

16 A. Lowest part -- the lowest part of the
17 subdivision?

18 Q. Yeah, topographical?

19 A. I would say is right in here. There's a ravine
20 right in here. And our storm drain right now crosses River
21 Road right here and drains into the river. Now, this was
22 going to be the retention pond, and that's the only
23 reasonable spot to put one, and we want to drain this area
24 here -- I'm sorry, here. It may have to be that the drain
25 would -- we might not be able to get across right here to

1 this area, so it may have to go this -- this route.

2 Q. Along the perimeter of the property?

3 A. Then you're going to get deeper. The deeper you
4 go, the more money it costs. If you went through this area
5 here, it's between lots and easements, and again, you would
6 be boring under the road and there's all the utilities,
7 sewer, water, gas, storm sewer, existing storm sewer.

8 Q. In the right of way?

9 A. In the right of way, that would have to be dealt
10 with.

11 Q. And is it fair to say that the rear of the lots
12 between nine and 16 are lower than the road?

13 A. Yes.

14 Q. Okay. Thanks. I want you to take a look at
15 Exhibit 19. You mentioned brambles and trees that were on
16 the back of the lots prior to the clearing of the lots by
17 the city. Is this the type of brambles and brush that was
18 there that a photograph was taken from the adjacent
19 property?

20 A. Yes, that's what was on our property.

21 Q. And that accurately depicts --

22 A. Yes, it does.

23 Q. -- what was there prior to the city installation?

24 A. Yes, it does.

25 Q. I'm going to hand you what we've marked as

1 Exhibit 41, this here. Did you indicate -- do you see
2 that?

3 A. Yeah.

4 Q. What is -- what is this base right here?

5 A. That's a concrete monument, property corner.

6 Q. And who installs those?

7 A. The engineer.

8 Q. And it would be Peterman and Associates?

9 A. Yeah.

10 Q. And which -- what is -- what is this in
11 relationship to your property?

12 A. Back corner of lot 9.

13 Q. And was that there when the city surveyed the
14 property to put the drain in or the storm water in?

15 A. Yes, it was.

16 Q. Was it visible?

17 A. Yes, it was.

18 Q. Did they clear -- did the city clear into your
19 property based upon where that monument is located?

20 A. Yes, they did, from one end of that property pin
21 to the other property pin, from one end of that subdivision
22 to the other, along the tracks.

23 Q. I'm going to hand you what's been marked as
24 Exhibit 83. Did you compile a cost of the subdivision when
25 it was built back in 2001, you and Mr. Laskey?

1 A. Yes, we did.

2 Q. And is Exhibit Number 83 -- it shows a total of
3 \$1,930,085?

4 A. Yes.

5 Q. And there's a breakdown for the land and the
6 engineering. Are those the numbers that were actually
7 incurred?

8 A. Yes, they were.

9 Q. Okay. And then I want you to take a look at page
10 2 of Exhibit Number 83. This was a projection of what your
11 price would be on a per-lot basis if you sold 22 lots?

12 A. Correct.

13 Q. And that would be how much?

14 A. Profit?

15 Q. Yes -- no, how much total price sales?

16 A. 2,895,000.

17 Q. And the construction cost?

18 A. 1,930,000.

19 Q. And gross profit?

20 A. 820,000.

21 Q. Okay. That hasn't been accomplished, correct?

22 A. Correct.

23 Q. In fact, tell the jury what the situation is
24 today?

25 A. There are no sales. I don't know when the last

1 sale was, but there hasn't been any sales for a while.

2 Q. And do you attribute the loss of the sales to the
3 cutting of the trees and the flooding of your property?

4 MR. BAHRET: Objection.

5 MR. ROBON: I'll rephrase the question.

6 BY MR. ROBON:

7 Q. Tell us what you think has caused an absence of
8 sales.

9 MR. BAHRET: That's objectionable also.

10 THE COURT: As the property owner and developer,
11 he can offer his view on why he thinks the property hasn't
12 sold. I'll overrule the objection.

13 A. Well, there's a number of reasons. I don't know
14 all the reasons, the answers to why --

15 BY MR. ROBON:

16 Q. What's the principal reasons?

17 A. But I think that we were hurt, sales were hurt by
18 scalping the back of that property line from one end to the
19 other along the railroad tracks and exposing the tracks to
20 the trains.

21 Q. I'm handing you what we've marked as Exhibit 84.
22 This is a statement from First Federal Bank. Is this where
23 the company has its loan?

24 A. Yes, it is.

25 Q. And let's see, this is dated April 15th of '08.

1 Can you indicate to the jury the amount due at the bottom?

2 A. 1,324,000.

3 Q. Are you current on your payments?

4 A. No.

5 Q. And can you tell the jury why you're not current
6 on your payments?

7 A. No sales to generate capital.

8 Q. Was there any advanced notice, to your knowledge,
9 prior to the city coming and cutting the trees that that
10 was going to occur?

11 A. No, there wasn't, not to my knowledge.

12 Q. How did you find out about it?

13 A. Just by driving by the property and crossing
14 Bates Road, the tracks at Bates Road, I noticed that there
15 was work being done. And then I just looked into it, drove
16 back around Cambridge and saw that it had already been cut
17 at that point. They were already past our subdivision and
18 towards Toledo.

19 Q. Nothing you could do about it?

20 A. No.

21 Q. Can you tell the jury -- explain to the jury how
22 the cutting and the scalping of the property has impacted
23 not only the subdivision, but you personally?

24 MR. BAHRET: Your Honor, I object to him saying
25 it's scalping and the leading nature.

1 THE COURT: Well, and I'm not sure the impact
2 personally is appropriate. So for a couple reasons, I'll
3 sustain the objection.

4 BY MR. ROBON:

5 Q. Would you tell us -- can you explain to the jury
6 what you believe the impact was in the scalping of the
7 property by the City of Toledo?

8 MR. BAHRET: Objection, Your Honor, to property
9 was scalped.

10 MR. ROBON: I'll rephrase it, Your Honor.

11 THE COURT: Thank you very much.

12 BY MR. ROBON:

13 Q. When you use the word "scalping" --

14 MR. BAHRET: He didn't, you did. I object.

15 Q. -- what did you mean?

16 THE COURT: The witness did use the word.

17 MR. BAHRET: I apologize.

18 THE COURT: Let's not. Let's just try another
19 question and use another verb, please.

20 BY MR. ROBON:

21 Q. Can you think of another word that you would
22 describe what happened to the rear of the subdivision other
23 than scalping?

24 A. Clear-cut.

25 Q. Clear-cut. Okay. And would you explain to the

1 jury what you mean by it was clear-cut?

2 A. Not select cut. Everything cut.

3 Q. Nothing left?

4 A. Nothing left.

5 Q. And how has that impacted the sales of lots or
6 the subdivision itself?

7 A. Well, I believe that -- as I said before, I
8 believe that that had -- has a lot to do with that
9 subdivision, that subdivision, everyone in Perrysburg knows
10 that the tracks was behind there. Everyone from Perrysburg
11 all the way to Rossford, both sides of the tracks, have a
12 buffer by bramble trees and brush. You go from Perrysburg
13 to Rossford, this piece of property is the only one that is
14 clear-cut. Nowhere else did I see anything like this was
15 done. And I believe that it had a lot to do with the
16 sales.

17 Q. I don't know if it was you or Mr. McCarthy that
18 took this photograph of the tree stumps that were left. Do
19 you recall?

20 THE COURT: What exhibit number?

21 MR. ROBON: This is Exhibit Number 92.

22 THE COURT: Thank you.

23 A. I did not take that. I don't know who took that.

24 BY MR. ROBON:

25 Q. Did you see the tree stumps cut like that?

1 A. Yes, I have seen those.

2 Q. And they were on this Cambridge subdivision
3 property?

4 A. Correct. Yes.

5 MR. ROBON: I have nothing further, Your Honor,
6 at this point.

7 THE COURT: Thank you.

8 You may cross-examine.

9 MR. BAHRET: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. BAHRET:

12 Q. Mr. Taylor, you and I met before, did we not?

13 A. Yes.

14 Q. And in fact, you gave testimony and I was asking
15 questions, correct?

16 A. Correct.

17 Q. Did you review that transcript before testifying
18 here today?

19 A. No, I haven't.

20 Q. Do you recall that the deposition was done in
21 Mr. Robon's office?

22 A. Yes, I do.

23 Q. Do you recall that it was done August 6th, 2007?

24 A. That sounds right. I don't know the date.

25 Q. And you were under oath?

1 A. Yes, I was.

2 Q. And of course telling the truth?

3 A. Yes, I was.

4 Q. Have you done any research since that deposition
5 was done that would allow you to express this expertise as
6 far as why lots aren't selling?

7 A. No, I haven't.

8 Q. And the reason I ask, sir, is I asked you that
9 question back in August of 2007. Do you recall what you
10 told me?

11 A. No, I don't.

12 Q. Well, the answer is that you had absolutely no
13 idea whatsoever.

14 THE COURT: I -- counsel, it's standard procedure
15 in my courtroom --

16 MR. BAHRET: All right.

17 THE COURT: -- that when you're going to use a
18 deposition you provide the witness with a copy of the
19 deposition transcript, the page and the line numbers so
20 that we're all literally on the same page.

21 MR. BAHRET: Okay.

22 THE COURT: Thank you.

23 BY MR. BAHRET:

24 Q. Do you see the page there, sir?

25 A. Yes.

1 Q. And the question that's highlighted, are you the
2 person to ask why these lots are not selling, do you see
3 it?

4 A. Yes.

5 Q. And you told me no?

6 A. Correct.

7 Q. And then I said, you don't have a clue why
8 they're not selling, and you say, no, except for -- I don't
9 know the answer to that?

10 A. Yes.

11 Q. Have you gained knowledge since then?

12 A. Well, when was that, a year ago, almost a year
13 ago?

14 Q. Yeah, not quite.

15 A. I've thought about it since a year. Yeah,
16 knowledge, you gain knowledge every day, I learn something
17 new every day. Yes, I did gain knowledge from a year ago,
18 and I have seen things, I have been out there to Cambridge
19 since then.

20 Q. And you've gained knowledge as to why lots aren't
21 selling?

22 A. You asked me my opinion, they asked me my
23 opinion; yes, that was my opinion.

24 Q. Why didn't lots sell in the three years before
25 the city project was put in?

1 A. I don't know.

2 Q. No idea at all?

3 A. I don't know.

4 Q. I mean, that's the truth, though, right?

5 A. I don't know.

6 Q. You don't know?

7 A. I mean --

8 Q. You don't know that you didn't sell a lot?

9 A. Is that the question?

10 Q. Yeah, do you know that there were no lots sold in
11 Cambridge since January of 2004 when somebody that already
12 lived there bought the empty lot next to it?

13 A. I know that.

14 Q. You do know that?

15 A. Yes.

16 Q. Do you know why?

17 A. Do I know why --

18 Q. Why did nobody express interest in?

19 A. No, I don't, I don't know why.

20 Q. -- in buying the lot?

21 A. No, I don't know why.

22 Q. Okay. Now, you mentioned something about
23 Cambridge was the only area that was clear-cut for this
24 project, do you remember saying that?

25 A. Just now?

1 Q. Yeah.

2 A. Yes.

3 Q. The fact of the matter is that, first of all, the
4 picture that you showed of representative brambles or weeds
5 and so forth, do you remember Mr. Robon showing you that
6 picture?

7 A. Yes.

8 Q. That's not on Cambridge property, correct?

9 A. I think it is. I think it's at the corner of lot
10 9. That's what I saw at the corner of lot 9, that
11 monument.

12 Q. The bramble picture?

13 A. I understand what you're saying, but the corner,
14 the lot --

15 THE COURT: The corner of lot 9 was Exhibit
16 Number 41.

17 THE WITNESS: And that is --

18 THE COURT: Just a moment, please. I think
19 counsel's referring to Exhibit Number 19.

20 MR. BAHRET: That's correct. Is that up here
21 somewhere?

22 MR. ROBON: Yes.

23 BY MR. BAHRET:

24 Q. This picture, do you remember talking about that?

25 A. Yes, I do.

1 Q. That's not on Cambridge, is it?

2 A. I don't know the -- I don't know.

3 Q. Okay. You don't know if Cambridge still has
4 brambles like Exhibit Number 19 on it now?

5 A. It does not.

6 Q. So do you know this is not Cambridge then?

7 A. It's not Cambridge.

8 Q. Okay.

9 A. Well, I'm sorry. On the corner of lot 9, there
10 are still some brambles.

11 Q. Well, when you say --

12 A. And you can see the corner monument in the
13 picture that you showed earlier of the monument in the
14 corner of lot 9, probably 20-foot on our property, there's
15 still brambles.

16 Q. And there's --

17 A. And that picture there could very well be that
18 picture on the corner of lot 9.

19 Q. Do you know where that picture was?

20 A. No, I don't.

21 Q. The fact of the matter is that next to Cambridge
22 is the W.W. Knight Preserve?

23 A. No.

24 Q. What's next to Cambridge?

25 A. Private residence, I think it's 6-acre piece.

1 Q. Okay. And then down the -- keep down going?

2 A. Another residence. I think -- I think there's
3 three or four residences down towards Perrysburg.

4 Q. And they all have thick vegetation on their land
5 still there now?

6 A. Yes, they do.

7 Q. Okay. And when we talk about or when you talk
8 about clear-cut, the fact of the matter is that Cambridge
9 used to be a farm, correct?

10 A. Not to my knowledge. Oh, when -- years ago,
11 maybe 50 years ago something. What are you saying?

12 Q. Are you aware of the fact that your engineer
13 that's going to testify in this case says that Cambridge
14 was a farm? If you're not aware of it just say you're not
15 aware of it?

16 A. I'm not aware of that.

17 Q. And typically, farms get rid of the trees?

18 A. Yeah. Yes.

19 Q. A tree makes it very difficult to farm?

20 A. Right.

21 Q. And so virtually all of the trees were off the
22 property of Cambridge, correct?

23 A. No.

24 Q. With the exception of what you say are trees at
25 the very back yards along those lots, the trees are gone?

1 A. Well, no. They're still there on all those lots.
2 The trees that are there, the only trees that were cut were
3 the ones for the road to put the street in and the storm
4 sewers and sanitary sewers. There's -- that site still has
5 trees on it. It's not a farm. It never was -- to my
6 knowledge, it wasn't a farm.

7 Q. You're saying all those lots, even down where the
8 cul-de-sac is, those are still heavily wooded lots?

9 A. No. They're not now. They were cut to put the
10 street in.

11 Q. All right.

12 A. What I'm saying is, you asked me if that was a
13 farm, and it wasn't a farm, not for a long time ago.

14 Q. All right. Sir, are you -- you're saying that
15 there was a encroachment, even on lots 9, 10, and 11?

16 A. I would say yes.

17 Q. Well, why is your attorney telling the jury that
18 there wasn't?

19 A. I don't know the answer to that.

20 Q. Why is your expert saying that there wasn't an
21 encroachment on that end?

22 A. I don't know.

23 Q. You're not an expert in surveying, though, are
24 you?

25 A. No, I'm not.

1 Q. Would you agree with me that if -- if a property
2 were already cut to the very back, if somebody then removes
3 the adjoining property trees, now it's -- there's no
4 barrier; are you with me on that?

5 A. Yes.

6 Q. The barrier between Cambridge and the active
7 trains, the active train line -- do you know what I mean --
8 in large part, that barrier was -- was trees and vegetation
9 on railroad property; would you agree with that?

10 A. No, I wouldn't, I wouldn't.

11 Q. There's a picture of it that shows existing how
12 it was. We looked at that. Yeah, did you hear my
13 question?

14 A. Yeah, you're saying -- you asked me if the
15 majority of the vegetation was on -- between the active
16 railroad and the inactive railroad; is that correct?

17 Q. No. That's not what I asked. Would you agree
18 that the -- sorry, let me start over.

19 Would you agree that the vegetation, including
20 trees and all that, was on the majority of it was on the
21 railroad property?

22 A. No.

23 Q. Are you operating with the assumption that
24 everything between the inactive railroad and -- and
25 Cambridge was Cambridge property?

1 A. No, I'm not, because -- the reason I say that is
2 because I was there when they staked that piece of ground
3 or the surveyors, Peterman and Associates and put the
4 monuments in prior to any cutting --

5 Q. All right. We'll get back to that in a minute.

6 A. -- or any excavation on our part also.

7 Q. What?

8 A. And prior to any excavation on our part.

9 Q. Are you aware that Cambridge filed a drainage
10 plan with Wood County?

11 A. Yes.

12 Q. Are you aware that in the drainage plan,
13 Cambridge was required to clear the last 30 feet of the
14 land on Cambridge abutting the railroad?

15 A. No, I wasn't aware of that.

16 Q. Are you aware it says right on the drainage plan
17 clear the last 30 feet?

18 A. No, I wasn't.

19 Q. Okay. If Cambridge complied with the drainage
20 plan filed with Wood County, there would be nothing on
21 Cambridge in the last 30 feet, correct?

22 A. You said from property line in 30 feet?

23 Q. Sure is.

24 A. I'm not aware of that.

25 Q. Did you hear the question, though? If Cambridge

1 complied with that provision to clear the last 30 feet,
2 then if whatever is removed from the railroad, there's no
3 barrier left?

4 A. That's correct.

5 Q. Do you know if Cambridge complied with the
6 drainage plan that it filed with Wood County?

7 A. I don't know.

8 Q. You'd agree that the reason plans are filed is to
9 get them approved and then act upon them, do what I said
10 I'm going to do, correct?

11 A. The question was that's why we file plans?

12 Q. You file plans and you're expected to do what you
13 said you were going to do?

14 A. That's why plans are filed.

15 Q. All right. And so if you did what you said you
16 were going to do once the railroad trees are gone, there is
17 no barrier left, correct?

18 A. If we did what we? What the plans said to do.

19 Q. Right. Right?

20 A. That's correct.

21 Q. Okay. Let's talk about the rest of Old Granite.
22 Old Granite has more properties than Cambridge, correct?

23 A. Yes, it does.

24 Q. It's got a development called Rocky Ridge?

25 A. Yes, it does.

1 Q. And Rocky Ridge is an albatross, correct?

2 A. I don't know the answer to that.

3 MR. ROBON: Objection.

4 BY MR. BAHRET:

5 Q. Rocky Ridge --

6 THE COURT: Well, since he already answered and
7 said he didn't know, I'll overrule the objection.

8 BY MR. BAHRET:

9 Q. Rocky Ridge is in the Waterville area, correct?

10 A. It's in Waterville Township.

11 Q. All right. And how are lot sales going there?

12 A. They aren't selling.

13 Q. They aren't selling. That's what I thought. In
14 fact, not a single lot sold except the house that was
15 already on that acreage?

16 A. That's correct.

17 Q. You sold that house back to its owner?

18 A. That's correct.

19 Q. But you haven't -- in that development, it is
20 absolutely and without any equivocation, it is dead,
21 correct?

22 A. There's no lots sold.

23 Q. And you've been trying to sell lots there for at
24 least four or five years?

25 A. I don't know if it's been that long.

1 Q. Well --

2 A. I don't know, because I don't know the date on
3 that project.

4 Q. I thought you indicated 2003?

5 A. It may have been.

6 THE COURT: Okay. Gentleman, I have to give you
7 both a cautionary. You're tripping over each other. It's
8 going to make it very difficult for the jury to understand
9 and for the court reporter to accurately get down the
10 question and answer.

11 I'm going to ask the lawyer to please allow the
12 witness to finish the answer. I'm going to ask the witness
13 to allow the lawyer to complete his question before you
14 begin your answer.

15 Thank you very much.

16 MR. BAHRET: I'm sorry. He's right. If I
17 interrupt you, let me know, all right. I have a tendency
18 to get kind of excited about it.

19 BY MR. BAHRET:

20 Q. Getting back to Rocky Ridge, that was roughly a
21 2003 originating project?

22 A. Yeah. Yes.

23 Q. And with the exception of the former owner
24 staying in the house -- basically, you bought his acreage?

25 A. Correct. I'm sorry, no, we didn't. No, we

1 didn't. That is incorrect. We bought that property from
2 someone else. The owner of that.

3 Q. Go ahead?

4 A. And we bought the owner of the house, the house
5 that's there, from him, his piece of property, like
6 6 acres. We bought the majority of the property from
7 someone else.

8 Q. Okay.

9 A. Does that make sense? It was a 90-acre piece.
10 We bought -- I'm just going to say 80 acres from another
11 person, and this person that's in that house now, we bought
12 his piece of property was 15 acres. We then sold him back
13 6 acres.

14 Q. All right. So you combined two parcels?

15 A. That's correct.

16 Q. And then carved out his house for him to keep?

17 A. That's correct.

18 Q. And whether you -- okay. So I now understand
19 it's two parcels, but putting that fact aside, you haven't
20 been able to peddle even a single lot, not one?

21 A. Not one lot has sold, correct.

22 Q. Okay. Do you have a problem with a railroad
23 there?

24 A. No, we don't.

25 Q. And you have another development called -- was it

1 Birchwood Hollow?

2 A. Yes.

3 Q. And where is that?

4 A. In Rossford.

5 Q. And how's that development doing?

6 A. We sold -- we had commitments on all of those
7 lots, and we sold a third of them.

8 Q. You sold ten out of 34?

9 A. Yes, sir.

10 Q. And you had commitments, 24 of the lots fell back
11 on the table because the builder went under, correct?

12 A. I don't know the -- I don't know if that builder
13 went under.

14 Q. Well, he stopped building, correct?

15 A. Yeah. Yes.

16 Q. So 24 lots over in Birchhollow are up for grabs
17 still as we stand here today?

18 A. Yes.

19 Q. And you haven't been able to sell any of those in
20 a few years either?

21 A. Yes.

22 Q. Why is that?

23 A. I don't know the answer to that.

24 Q. Why are three --

25 A. I don't know. In the world we live in maybe

1 today.

2 Q. Say what?

3 A. Maybe it's the world we live in today.

4 Q. Okay. That's kind of what I was thinking. The
5 reason then, sir, that you have three developments, all of
6 which have dead in their tracks, is the environment?

7 A. No, I wouldn't say that. I think two of them
8 are -- one of them is a water issue. I think Birch --
9 Rocky Ridge is a water issue.

10 Q. And what --

11 A. We have sewer there. It took us a while to get
12 the approval on sewer. Timing means a lot when you're
13 selling lots. So --

14 Q. And --

15 A. The bank -- the banker was -- had committed us to
16 water -- money to put in water and sewer if we got it from
17 the village. And the village approved our sewer, and we
18 had to get an easement. It was a long-term thing. And --
19 and then we had only wells. The only way we didn't have
20 city water. Finally, we got approval and got city water,
21 and the bank -- we had a problem with the bank with their
22 commitment. They didn't uphold their commitment.

23 Q. And just so the jury --

24 A. So it isn't what you just said.

25 Q. Let me know when you're done.

1 A. Okay. I'm done.

2 Q. So the jury doesn't get confused, what you're
3 talking about, a water problem at Rocky Ridge is not a
4 flooding-type water?

5 A. City.

6 Q. You don't have any -- you want to get water line
7 there?

8 A. Correct.

9 Q. And you don't have it?

10 A. Now we have the availability, we did not, though.

11 Q. Has been installed?

12 A. It has not been installed yet, part of it has.

13 Q. Is Cambridge still being marketed?

14 A. I don't know the answer to that.

15 Q. Well, I noticed there weren't any for sale signs
16 on any of the empty lots?

17 A. I don't know.

18 Q. And who would know if Cambridge was still?

19 A. Jack Laskey handles all of that.

20 Q. Is there a reason why you wouldn't be trying to
21 sell the lots in Cambridge?

22 A. There is no reason that -- to my knowledge.

23 Q. Does Cambridge -- are they listed with any
24 broker?

25 A. I don't know the answer to that. Jack Laskey

1 does that.

2 Q. You know that there were three builders that were
3 signed on to be the exclusive builders in Cambridge?

4 A. Yes.

5 Q. And that was Betterman, Huffman, and who was the
6 third?

7 A. Schoen.

8 Q. Schoen. Ridgewater Construction?

9 A. Bridgewater.

10 Q. And do you know that all three of them pulled out
11 at the end of 2003?

12 A. They didn't pull out, to my knowledge --

13 Q. Well --

14 A. -- they bought lots.

15 Q. They bought -- they each bought a lot and were
16 supposed to buy another, correct?

17 A. Correct.

18 Q. And they didn't, correct?

19 A. Correct.

20 Q. And do you know why they didn't fulfill what you
21 thought was a commitment?

22 A. I think they had a problem with the world we live
23 in. I think 9-11.

24 Q. Right.

25 A. We sold three lots prior to 9-11. And after 9-11

1 there was a stock market problem, and they had some -- I
2 think they had some financial problems.

3 Q. Are you aware that the lots that they bought were
4 actual -- well, I'm asking you this because you just said
5 9-11 was a show-stopper. Are you aware that they actually
6 bought their lots in October of 2001?

7 A. Yes.

8 Q. The month after 9-11 they bought lots?

9 A. Prior to.

10 Q. No. October of 2001 is what the document says.
11 Are you aware of that?

12 A. No. That might have been closing, yeah, but they
13 bought them -- they had a purchase agreement with us prior
14 to that, and they up held their agreement.

15 Q. Okay. Are you aware, sir, that --

16 A. I'm not aware of the closing date, no, I'm not.

17 Q. Are you aware that on December 29, 2003 all three
18 of those builders canceled their contracts for the second
19 lots and their deposit money was refunded?

20 A. No, I wasn't aware.

21 Q. You'd agree that not one of them has done
22 anything there since December of 2003, correct?

23 A. No, I wouldn't agree to that.

24 Q. You don't?

25 A. No.

1 Q. What?

2 A. I think Bill Schoen built something in there.

3 Q. When did Bill Schoen --

4 A. I don't know the date, but I know Bill Schoen
5 built one of those houses.

6 Q. But you don't know when it was?

7 A. No, I don't.

8 Q. All right. Would you agree, sir -- and we'll get
9 those documents through Mr. Laskey, I guess. He'd be the
10 one to ask about sales histories?

11 A. Yes, sir.

12 Q. Would you agree that you can hear the train
13 whistle if you're outside standing in the development even
14 before the city work was done?

15 A. Yes.

16 Q. And would you agree that you could see the train
17 at least part of the train, before the city work was done?

18 A. Yes.

19 Q. And obviously, anybody would know there's trains
20 going by behind that development even before the city work
21 was done?

22 A. Yes.

23 Q. In fact, you had an occasion to see the train
24 from one of the houses there, did you not?

25 A. I don't understand the question.

1 Q. Were you in one of the houses before the city
2 work was done?

3 A. Yes.

4 Q. And saw the train?

5 A. Yes.

6 Q. From the house?

7 A. Yes, from the first floor, yes.

8 Q. Okay?

9 A. Street level.

10 Q. And you'd also agree that if you were standing in
11 what would be the yards -- I know there's not yards there
12 as such -- but if you were standing in the yards, lots 9
13 through 16, you could see the train?

14 A. Today? Yes.

15 Q. Before the city work was done?

16 A. Before the city work was done? Well, it was
17 covered up and when you're in the backyards of nine and 16,
18 it was covered up by brush.

19 Q. But you could still see part of the train?

20 A. Yes, you could -- yes, you could.

21 Q. All right. What I'm getting at, sir, I know
22 you're saying at least there's a partial film there, but
23 it's not like just a concrete wall?

24 A. Correct.

25 Q. You could see and know there's a train going

1 there?

2 A. That's correct.

3 Q. Sir, you said you're a 50/50 partner with
4 Mr. Laskey?

5 A. Yes.

6 Q. When did you come to that knowledge?

7 A. I don't know. I don't know the date. Is that
8 what you want, a date?

9 Q. Yeah, when did you figure out that you were a
10 50/50 partner?

11 A. I don't know the -- I don't know the date. I
12 don't know the answer to that.

13 Q. Okay. That same deposition this is page 52, can
14 you see it?

15 A. Yeah.

16 Q. Do you see the down towards line 25 I asked, are
17 you a 50/50 -- are you 50/50 percent? And you see the
18 prior question, to put it in context, we're talking about
19 Jack Laskey?

20 A. Yes.

21 Q. How did you answer that question, do you
22 remember, are you 50/50 partners?

23 A. I don't know how I answered that.

24 Q. Do you know now?

25 A. I know -- I think I'm 50/50 partner. I might

1 have an some documents of a corporate agreement or
2 something. Maybe he has 1 percent more than I do. I don't
3 know the answer to that.

4 Q. Okay. And so even --

5 A. I could have been wrong. I mean, I didn't know
6 then because I did not have our corporate papers to -- I
7 don't have them today either, so I really don't know. I
8 might be wrong. He might have 1 percent more than I do. I
9 don't know.

10 Q. Do you remember talking about your bank statement
11 and the loan to the bank? It was Exhibits 83 and 84?

12 A. No, I don't.

13 Q. You don't remember Mr. Robon talking about that
14 with you here today?

15 A. Okay, yes, I do.

16 Q. Okay. The fact of the matter is, since you
17 didn't sell any lots in Birch Hollow between '04 and '06,
18 we know you didn't sell any lots in Rocky Ridge, correct?

19 A. Correct.

20 Q. And you also didn't sell any lots in Cambridge
21 between 2000 -- January 2004 and the spring of '06 when the
22 clearing was done?

23 A. Yes.

24 Q. So we got at least two-and-a-half years of no
25 sales anywhere for Old Granite, correct?

1 A. I'm assuming that's correct.

2 Q. Okay. And so how were you servicing that debt at
3 that time?

4 A. I don't know. I wasn't -- Jack took care of
5 that.

6 Q. Sir, was there any kind of a water ponding issue
7 on the back of lot 16 or 15 before the city work was done?

8 A. No. I don't think there was.

9 Q. Okay. Why did a guy testify here this morning
10 that for as long as he's been alive, and he's over 50 years
11 old, there had been water back there?

12 A. You're asking me why he said that? I don't know.

13 Q. Why I can't -- why would the guy that lives
14 there, that has lived there his entire life, tell us
15 there's always been standing water back there?

16 A. I don't have a clue why he would say that.

17 Q. Why would Old Granite's expert witness, McCarthy,
18 say that there's always been standing water back there, he
19 just claims it's worse now?

20 A. I don't know why he would say that.

21 Q. Okay. Well, the fact of the matter is, you just
22 don't know if there's water back there or ponding issue
23 back there or not prior to spring of 2006?

24 A. There wasn't when we bought the property,
25 standing water on those lots.

1 Q. Okay.

2 A. Those lots were -- that -- that area back there
3 was draining.

4 Q. Are you aware of the fact that Mr. Laskey
5 testified in discovery in this case that he consulted
6 McCarthy about a water problem in those lots before the
7 city cut the drainage culvert?

8 A. No, I was not aware of that.

9 Q. Okay. Are you aware of the fact that McCarthy,
10 both of them, the guy that lives there in that lot 15
11 house, that's Mike McCarthy -- let me take them one at a
12 time. Are you aware of the fact that Mike McCarthy says
13 that there was standing water in his backyard in lot 16
14 before the city put their work in?

15 A. No, I wasn't aware of that.

16 Q. And engineers -- I already asked you, you were
17 unaware that his father, the engineer, acknowledges there
18 was a ponding problem as well?

19 A. I did not -- I did not know anything about that.

20 Q. Are you aware that you are the only person on the
21 spinning globe that says there wasn't a ponding problem
22 before the city work was done?

23 MR. ROBON: Objection.

24 THE COURT: I'll sustain. You can rephrase the
25 question, please.

1 BY MR. BAHRET:

2 Q. Are you aware of anybody other than you that says
3 there was not a water ponding problem on those lots before
4 the city work was done?

5 A. I'm not aware of that.

6 MR. BAHRET: Thank you.

7 THE COURT: Any redirect?

8 MR. ROBON: Sure.

9 REDIRECT EXAMINATION

10 BY MR. ROBON:

11 Q. Tom, when he talks about Rocky Ridge, which is a
12 subdivision out in Waterville Township, no homes could be
13 built on those lots, could they?

14 A. No, they couldn't.

15 Q. And could you tell the jury why you could not
16 build on those lots?

17 A. Because of the soil conditions wouldn't -- the
18 county wouldn't give us septic tanks, the ground would not
19 perk.

20 Q. "Perk" means?

21 A. Percolate for a septic system.

22 Q. Mean it was too much clay?

23 A. Rock.

24 Q. Okay. And what was --

25 A. And water, no -- no --

1 Q. And water, what do you mean?

2 A. City water.

3 Q. Is it fair to say that you could not get city
4 water for several years?

5 A. That's correct.

6 Q. And then when you finally got approval, you were
7 in default of a bank loan and the bank?

8 MR. BAHRET: Objection.

9 MR. ROBON: He raised the issue.

10 THE COURT: I know. I think the objection's
11 based on leading.

12 MR. BAHRET: Correct.

13 MR. ROBON: I'll rephrase the question.

14 BY MR. ROBON:

15 Q. What did the bank tell you after you finally got
16 approval to have the water line installed in Rocky Ridge?

17 MR. BAHRET: Objection, hearsay.

18 THE COURT: Try it one more time.

19 BY MR. ROBON:

20 Q. Okay. Why couldn't you install the water line in
21 the Rocky Ridge subdivision?

22 A. The bank wouldn't fund it. They said originally

23 --

24 MR. BAHRET: Objection.

25 THE COURT: I'm sorry. You can't say what

1 somebody told you. That's hearsay. But your answer stands
2 as is.

3 BY MR. ROBON:

4 Q. And when Mr. Bahret asked you all these questions
5 about marketing and selling lots, you don't really know
6 when the last lot sold in Birch Hollow, do you?

7 A. No, I don't.

8 Q. And would you tell the jury why you don't know?

9 A. I don't handle anything with sales or marketing.
10 I'm not around. I'm in Columbus, Ohio. There's no work
11 for me in this town. So in the last -- it's been a year
12 now, I've been in Columbus, Ohio working.

13 Q. Is it fair to say that divvying up work, as
14 Laskey does the business work and the sales and you do the
15 construction?

16 A. That's correct.

17 Q. Now, he brought up this drainage that he says
18 you -- you filed in Wood County. He didn't produce this
19 map that says you've got to clear the last 30 feet?

20 A. No.

21 Q. Did you clear 30 feet of the rear of all those
22 lots?

23 A. No, we did not.

24 Q. You did not. Was there any intention to clear
25 those?

1 A. Not to my knowledge.

2 Q. And today when we go out to lot 15 which has got
3 the spec house on it, there were all kinds of trees on lot
4 16, weren't there?

5 A. Yes, there was.

6 Q. And there was some trees spaced throughout the
7 subdivision?

8 A. And there still are, yes. I think what the
9 county requires or asked on the plan was where we ran a
10 storm sewer back to the -- those four catch basins that you
11 show on the map.

12 Q. Would you show us over here?

13 A. I think that that's what the county -- not the
14 whole -- not the whole length of the property. I don't
15 know.

16 MR. BAHRET: I figured you didn't know based on
17 your answer.

18 BY MR. ROBON:

19 Q. You're talking about these four catch basins?

20 A. Correct.

21 Q. That they wanted to -- trees cleared from the
22 street there?

23 A. Yes.

24 Q. You had to do that anyway to put the drain in,
25 didn't you?

1 A. Correct.

2 Q. Okay.

3 MR. ROBON: I have no further questions, Your
4 Honor.

5 THE COURT: Anything further?

6 RECROSS EXAMINATION

7 BY MR. BAHRET:

8 Q. Mr. Taylor, I think you already said, the fact of
9 the matter is, you don't know what the drainage plan filed
10 with the county required?

11 A. I beg your pardon? I don't understand the
12 question.

13 Q. You don't know what the drainage plan that was
14 filed with Wood County required?

15 A. Today, right now?

16 Q. Yes.

17 A. No, I don't.

18 Q. And you don't know what was represented to be
19 cleared on the back of the lots, if anything, you just
20 don't know?

21 A. I don't know. No, I don't. I don't have the
22 plan in front of me. I can't answer that correctly.

23 Q. All right. And would you agree that Peterman
24 prepared the drainage plan?

25 A. Yes, they did.

1 Q. And the guy, Todd Jenkins, that prepared it, he's
2 the guy that can speak to what is required?

3 A. I would think so.

4 Q. Okay. And you know he is the guy that prepared
5 it, right?

6 A. Yes.

7 Q. Because you retained them, correct?

8 A. That's correct.

9 Q. And that was part of your task in this
10 partnership?

11 A. That's correct.

12 Q. And you relied upon Jenkins, who will testify
13 here and will have that plan, you relied on him, correct?

14 A. Yes.

15 Q. He's the man to speak to that, right?

16 A. Him or the county -- the county engineer --

17 Q. Thank --

18 A. -- inspector has to say.

19 THE COURT: Thank you. You may step down.

20 Plaintiff may call its next witness.

21 MR. ROBON: Can we approach for a second, Your
22 Honor?

23 THE COURT: Sure.

24 (A side bar conference was had off the
25 record.)

1 MR. ROBON: We would like to call Christy
2 Soncrant upon cross-examination.

3 THE COURT: Ladies and gentlemen, the plaintiff
4 is entitled to take a representative of the defendant and
5 to examine that representative, that employee.

6 I indicated to counsel that I expected to take
7 our lunch break in about a half an hour, which is when your
8 lunch is expected to arrive. And so we'll take a break in
9 the testimony at that point. The plaintiff has other
10 witnesses coming this afternoon. And it may be that we
11 will have this witness stand down, literally, and take your
12 seat, the other people when they arrive here, so that we
13 can keep things moving, just wanted to give you a heads up
14 on that.

15 CROSS EXAMINATION

16 BY MR. ROBON:

17 Q. It's Mrs. Soncrant now, I understand.

18 A. Yes, it is.

19 Q. And in 2006 would you tell the jury how old you
20 were?

21 A. I was 33.

22 Q. And your only job since getting out of school is
23 with the City of Toledo?

24 A. Yes, it is.

25 Q. In the engineering department?

1 A. Technically, I was at water distribution and then
2 the mayor combined all of the engineers and made
3 engineering services, so.

4 Q. And today who do you report to?

5 A. I have a commissioner of engineering services.

6 Q. And is that Mr. Moleen?

7 A. Yes, it is.

8 Q. And who did you report to in 2006?

9 A. 2006, the commissioner was Warren Henry.

10 Q. Were either of those gentleman ever out to the
11 Cambridge subdivision site?

12 A. Warren Henry may have been. I don't believe that
13 Moleen has.

14 Q. So the commissioners of engineering of the city,
15 even with this lawsuit pending, you can't testify have ever
16 come out to this site?

17 A. I am not sure.

18 Q. When -- can you tell the jury when you first
19 became aware of a problem with the owners of the Cambridge
20 subdivision?

21 A. What kind of a problem are you --

22 Q. Any kind of problem, when did you first become
23 aware?

24 A. John McCarthy, who is the engineer for the
25 subdivision, had -- I don't remember if he called me or

1 what it was, and had said that he had an issue with the
2 clearing and with a possible pipe.

3 Q. Okay. And is it true that he e-mailed you at
4 least eight to ten times during the spring and summer of
5 2006 about those problems?

6 A. We did have e-mails back and forth.

7 Q. And isn't it true that the city did absolutely
8 nothing about those problems that were brought to your
9 attention?

10 A. No, I don't believe that to be true.

11 Q. Well, then, why don't you tell this jury what the
12 city, in fact, did?

13 A. The city met with Mr. McCarthy and listened to
14 his thoughts, and --

15 Q. Physically, I want to know what you did on the
16 site?

17 MR. BAHRET: Your Honor, I'd like her to be able
18 to answer the question.

19 THE COURT: Well, let's -- well, let's let the
20 two of you stop interrupting her and allow her the chance
21 to answer the question.

22 A. I met with Mr. McCarthy on site a few times,
23 spoke with him on the phone.

24 Q. Did you -- were you trying to pacify him?

25 MR. BAHRET: Your Honor, could we let her finish?

1 MR. ROBON: It's cross-examination, Your Honor.

2 THE COURT: I understand, but we're going to
3 allow, as we do all witnesses, the opportunity to finish
4 their answer as long as they're being responsive, and she's
5 being responsive.

6 You may continue.

7 A. I'm sorry, what was the --

8 BY MR. ROBON:

9 Q. I'll rephrase the question. Did the city do any
10 type of physical work -- have any of its contractors do
11 anything to alleviate the problems that were brought to the
12 city's attention in the spring and summer of 2006? You can
13 answer it yes or no. If the answer is yes, tell the jury
14 what they did.

15 A. Okay. I feel that we tried --

16 Q. No. Yes or no. Did you do any physical things
17 near or about the Cambridge subdivision to cure any of the
18 problems that were brought to the city's attention, yes or
19 no?

20 MR. BAHRET: Your Honor --

21 THE COURT: I'm -- I'll allow her to answer yes
22 or no and explain her answer.

23 A. Physically, no.

24 Q. Thank you. Is the answer because you didn't
25 believe what was being said about the clearing and about

1 the flooding problem?

2 A. We did not agree.

3 Q. Did you believe it, yes or no?

4 A. We did not believe that we cut down trees on
5 their property, and we did not believe that we caused
6 flooding on their property.

7 Q. So you did nothing?

8 A. So we did nothing.

9 Q. Now, have you read Nick Nye's deposition from
10 Peterman and Associates?

11 A. No, I have not.

12 Q. Have you been told what he testified to?

13 A. No, I have not.

14 Q. Have you seen the survey that he prepared?

15 A. You gave me a -- you showed me a survey at the
16 deposition. I don't know if that's the one you're speaking
17 of.

18 Q. Let me hand you what we've marked as Exhibit
19 Number 7. Have you seen that document previously?

20 A. Yes, I have.

21 Q. And doesn't that document show that the city
22 encroached by several feet onto the rear of lots 12 through
23 15?

24 A. This is showing that's the property line, and
25 then -- oh that's --

1 Q. You can answer the question yes or no.

2 A. You'll -- I'm trying to figure out what the
3 drawing is. Thank you.

4 Q. Let me ask this question. "Do you know how to
5 read a survey?"

6 A. Yes, I do.

7 Q. Okay. Does that survey show that there had been
8 encroachments by the City of Toledo cutting down dozens and
9 dozens of brambles and trees on the property of the
10 Cambridge subdivision?

11 A. No. The only thing it shows is that this area
12 was disturbed. It does not show who it was disturbed by.

13 Q. So your defense is that Mr. McCarthy cut the
14 trees down?

15 A. I'm not saying that.

16 Q. There's --

17 A. It just says that the area is disturbed.

18 Q. Is the city denying that it did this disturbing?
19 You can answer yes or no.

20 A. Is the city denying that it did the disturbing?

21 Q. Yes.

22 A. I don't know whether it did it or not.

23 Q. You indicated in your deposition that you went
24 out to this site and drove -- I forgot what type of
25 vehicle -- down the path of the former railroad?

1 A. Yes, I did.

2 Q. And that you actually did see the back of the
3 Cambridge subdivision?

4 A. Yes, I did.

5 Q. Okay. Did you know -- were you a homeowner at
6 that time?

7 A. Yes.

8 Q. Did you know that leaving trees in the back of a
9 home might increase its value?

10 MR. BAHRET: Objection.

11 THE COURT: Overruled. She may answer.

12 A. I do not really know.

13 BY MR. ROBON:

14 Q. When you saw the Cambridge subdivision, isn't it
15 true that it didn't show up on any of the city drawings for
16 the contractors?

17 A. It just showed a property line.

18 Q. Right. Did you look for survey markers or
19 boundary markers at the Cambridge subdivision site?

20 A. The surveyors do that.

21 Q. Did you?

22 A. No, I did not personally.

23 Q. Did you even get out of your vehicle?

24 A. Not when we were driving by.

25 Q. Okay. And that's before anything occurred,

1 correct?

2 A. That is correct.

3 Q. Did you see the manhole that is located just past
4 lot 16 that was on the railroad right of way when you first
5 drove down this property?

6 A. I wasn't looking for a manhole. I don't -- if I
7 saw it -- I might have seen it, I do not recall whether I
8 saw it or not.

9 Q. Did you ever get out of your car and walk behind
10 the Cambridge subdivision?

11 A. Before construction began?

12 Q. Before construction.

13 A. No, I did not.

14 Q. Did you suggest to the contractor -- let me
15 phrase it this way: Did you have the right to have
16 modifications to the contract telling them to stay away so
17 many feet from a property line and things like that?

18 A. The city has the right to make a modification to
19 plans.

20 Q. Right. And you had that right in your contract?

21 A. Yes.

22 Q. Okay. And my question to you is, when the tree
23 clearing took place, you knew that a residential
24 subdivision was abutting the CSX right of way, correct?

25 A. Yes, I knew there was a subdivision there.

1 Q. And isn't it true that neither you, Mr. Moleen,
2 the other gentleman who was the commissioner of
3 engineering, Joe Crandall, who was the coordinator, not one
4 person within the City of Toledo administration suggested
5 that they be careful by the Cambridge subdivision and not
6 cut trees on somebody else's property?

7 A. We did.

8 Q. Is that true?

9 A. It would be true that we will not want them to
10 cut trees on someone else's property.

11 Q. I understand that. My question is, did you
12 affirmatively tell the contractor stay 5 feet away, 10 feet
13 away?

14 A. We did not tell the contractor how far to stay
15 away, no.

16 Q. And isn't it true that the City of Toledo
17 employees marked the survey line --

18 A. That is true.

19 Q. -- of what should be cut?

20 A. That is true.

21 Q. And isn't it true that was it you were in charge;
22 is that fair to say?

23 A. Yes, I was the project engineer for construction.

24 Q. Isn't it fair to say that you told Ric Man
25 Construction to cut right up to where the flags were that

1 the city marked?

2 A. Actually, no. When it comes to survey, our
3 surveyors -- the contractor pretty much talks to the
4 surveyors and us engineers leave that surveying up to the
5 city surveyor.

6 Q. Are you denying that the contractor was not
7 authorized to -- or was authorized to cut up to the flags
8 that the city marked, the surveyors marked?

9 A. Will you please ask that again?

10 Q. Are you denying that the contractor had
11 authorization to cut up to where the flags were that the
12 city --

13 A. No, I'm not.

14 Q. Okay. After the complaints came in from
15 Mr. McCarthy as the consultant for Old Granite, did the
16 City of Toledo engage in outside surveying company to check
17 the work of Peterman and Associates?

18 A. No, they did not.

19 Q. So you have no evidence to show that whatever
20 Peterman tells this jury is inaccurate?

21 MR. BAHRET: Objection.

22 THE COURT: Overruled.

23 A. I believe that our surveyors, Bob Babcock, the
24 surveyor for the City of Toledo, went back out and did
25 some -- did some checks with it. So he would have

1 knowledge.

2 BY MR. ROBON:

3 Q. Is it fair to say that the City of Toledo had a
4 \$50 million project putting this water main in, did not go
5 out and spend a couple thousand dollars to get an outside
6 surveying opinion as to whether or not the city encroached
7 on someone else's land; true or false?

8 A. That whole question is not true, the statement.
9 This project was 13 million.

10 Q. This segment of the project?

11 A. This segment, the project was 13 million.

12 Q. The whole project was 50 million?

13 A. Yes.

14 Q. Let's not mislead the jury --

15 MR. BAHRET: Objection.

16 THE COURT: Okay, folks, I'm going to ask you to
17 disallow counsel's remark.

18 And I'm going to ask you to please stop tripping
19 over each other. Lawyers, take a breath. Let the witness
20 finish his -- her answer, please. Thank you.

21 BY MR. ROBON:

22 Q. Why did you tell the jury this was a \$13 million
23 project when it was really 50 million?

24 A. Because this section was 13, and we're talking
25 about this section.

1 Q. This section. Isn't it true that the CSX
2 railroad was paid \$2.1 million for an easement to put the
3 water main in?

4 A. Yes, that's true.

5 Q. Isn't it true that this water main was put in by
6 the City of Toledo for profit, to sell water to the
7 communities in northern Wood County?

8 A. Actually, this water line was put in to maintain
9 our system, maintain the integrity of it. We have two
10 river crossings now. If one breaks, part of the city will
11 go out of water. So this added a third river crossing.

12 Q. You're not answering my question.

13 MR. BAHRET: Objection.

14 BY MR. ROBON:

15 Q. Was this water main put in so that the City of
16 Toledo could continue to sell water to the communities in
17 northern Wood County, yes or no?

18 A. In my opinion, no.

19 Q. Does it serve that purpose?

20 A. It serves water to the City of Toledo residents.

21 Q. And does it serve northern Wood County
22 residences?

23 A. Northern Wood County, is Rossford northern Wood
24 County?

25 Q. You don't know?

1 A. I think Rossford is in Wood County.

2 Q. Did you grow up in the Toledo area?

3 A. In Toledo, south Toledo, yes. I'm a city girl.

4 Q. And you don't know if Rossford's in Wood County
5 or Lucas County. And you were the engineer that was in
6 charge of this project through the city of Rossford?

7 A. Yes, that doesn't mean I need to know if Rossford
8 is in Lucas County or Wood County.

9 Q. Would you agree with me that when the city sells
10 water to nonresidents of Toledo, they mark up the price?

11 A. Yes, they do.

12 Q. And did the City of Toledo send notices to the
13 adjacent property owners that you were going cut the trees
14 and install this large water main behind their properties?

15 A. The City of Toledo did do a notice, yes.

16 Q. And they did a notice. Did they send a letter
17 out to anybody?

18 A. We did not send a letter out.

19 Q. And isn't it true that the notice that was
20 publicized was publicized in the City of Toledo, not in
21 Wood County?

22 A. It was publicized in the City of Toledo Blade,
23 which is distributed to outside communities also.

24 Q. And are you aware of the number of people that
25 are boycotting the Blade?

1 A. No, I am not.

2 MR. BAHRET: Objection.

3 THE COURT: Yes, already answered. Overruled.

4 BY MR. ROBON:

5 Q. How often were you out at the site of
6 construction during the summer of 2006, daily basis, once a
7 week?

8 A. Maybe once a week.

9 Q. And the rest of the time, you were in your
10 office?

11 A. Or I had other projects going on also.

12 Q. Oh, how many projects did the city assign to you?

13 A. There was other sections of this water line going
14 on.

15 Q. When you became cognizant of the possible
16 encroachment on the property of Cambridge, did you discuss
17 it with your superiors?

18 A. Yes, I did.

19 Q. And what were their instructions to you, ignore
20 it?

21 A. No. They were -- they knew I had met with the
22 property owner, and was trying to get their opinions and
23 figure out if there really was a problem or not.

24 Q. And until today, you've never acknowledged that
25 perhaps there was a problem, correct?

1 A. I have not acknowledged that.

2 Q. Oh, you have not acknowledged it. So you're
3 saying that Peterman survey is wrong?

4 A. I am not saying whether there is a problem or
5 not. I do not know for sure.

6 Q. So you're not acknowledging that the city did
7 anything wrong?

8 A. Correct.

9 Q. And did that directive come from the mayor,
10 Mr. Finkbeiner?

11 A. I don't.

12 Q. Or from whom?

13 A. I don't talk to the mayor.

14 Q. Who gave you that instruction?

15 MR. BAHRET: Objection.

16 THE COURT: Overruled.

17 A. No one gave me an instruction.

18 BY MR. ROBON:

19 Q. Did you recommend that to your superiors?

20 A. The superiors saw the same facts that I was
21 Schoen.

22 Q. My question is, did you recommend to your
23 superiors that you not acknowledge liability?

24 A. No.

25 Q. You made that determination yourself?

1 A. That's my opinion.

2 Q. And your superiors didn't overrule you, correct?

3 A. That is correct.

4 Q. Do you have any experience in surveying yourself?

5 A. Just the one class I took at U.T. going through
6 college.

7 Q. Have you ever looked through a transit or
8 anything like that?

9 A. Actually, yes.

10 Q. Yes?

11 A. Uh-huh.

12 Q. On a site?

13 A. At the university.

14 Q. While you were in school?

15 A. While I was in school.

16 Q. So you knew what a transit was?

17 A. Yes.

18 Q. Now, you will agree with me that the city
19 actually filled one of the railroad ditches, did it not,
20 with the access fill dirt caused by the digging of this
21 66-inch water main?

22 A. When we were installing the pipe?

23 Q. Yes.

24 A. How we explained that, yes, when they didn't have
25 enough room because the right of way was so narrow there,

1 so to install it during the day, they'd fill it in so they
2 could drive their trucks over, and then when they were
3 done, they redig it.

4 Q. And isn't it a fact that several hundred feet
5 towards Ford Road has not been dug out, it's actually solid
6 ground level?

7 A. Anything that we would have filled in, we would
8 have dug back out.

9 Q. Are you telling me that I'm imagining things when
10 I don't see a ditch there now?

11 MR. BAHRET: Objection. Your Honor, I object for
12 two reasons. One, it's totally irrelevant.

13 MR. ROBON: I'll rephrase.

14 MR. BAHRET: Let me finish. It's totally
15 irrelevant and nothing's going to -- it has nothing to do
16 with any issue on this case, and it has nothing to do with
17 plaintiff's property.

18 THE COURT: Let's address the relevancy area
19 then, what's the relevancy?

20 MR. ROBON: The question is, what authority she
21 has, Your Honor, and how she supervised her actions.

22 THE COURT: I'm struggling to find the
23 connection.

24 MR. ROBON: I'll rephrase the question.

25 THE COURT: Thank you.

1 BY MR. ROBON:

2 Q. Mrs. Soncrant, many times before the tree cutting
3 occurred were you actually on the site between Bates Road
4 and Ford Road, near the Cambridge subdivision?

5 A. I believe just the one time I had driven it.

6 Q. Just the one time. When was the next time
7 that -- this would have been sometime in the spring or late
8 fall of 2005, spring 2006 that you drove through, correct?

9 A. Correct.

10 Q. And when was the next time that you stepped foot
11 onto that site near the Cambridge subdivision?

12 A. This would have been after they cleared it, after
13 they had cleared it.

14 Q. After they had cleared it. And did you come out
15 because of Mr. McCarthy's complaints?

16 A. I don't think that was the next time. I think I
17 had come out to see them unloading pipe or bringing some
18 materials, that was possibly the next time, actually.

19 Q. So you didn't come out as a result of
20 Mr. McCarthy's complaints?

21 A. I did come out for that also.

22 Q. Which was it? You came out to see the pipe or
23 you came out as a result of his complaints?

24 MR. BAHRET: I object. He's arguing and he
25 switched the question. The prior question was, when did

1 you first come out after the clearing.

2 MR. ROBON: And the answer was to see the pipe.

3 A. I believe I went out and saw the pipe, which was
4 on the White Road side, not towards Cambridge's, further
5 the other direction, so I was in that area, you said, not
6 by Cambridge property, though.

7 BY MR. ROBON:

8 Q. Okay. And those pipes are about 6-feet high?

9 A. Yes.

10 Q. And how deep in the ground are they?

11 A. We usually do about 5-foot of cover minimum is
12 what we require.

13 Q. And I want you to tell the jury, did you, as a
14 city engineer, contact the water and sewer district
15 engineers in Wood County prior to opening any excavation on
16 the CSX right of way?

17 A. They --

18 Q. Yes or no?

19 A. Did I, personally?

20 Q. Yes.

21 A. No.

22 Q. Did you contact the Wood County engineer, Ray
23 Huber or his assistant Glenn Agner, before you commenced
24 any excavation on the railroad right of way?

25 A. Personally, I was not the first to call him, no.

1 Q. Tell the jury when you first became aware that
2 there was a 24-inch diameter drain pipe going from the
3 manhole on the railroad property directly in the path of
4 your 66-inch water main?

5 A. We had called a meeting with John McCarthy, which
6 was the engineer for Cambridge, myself, our construction
7 technician who is on site on a daily basis, and then the
8 contractor and Wood County, Ray Huber, the engineer that
9 he's speaking of. We all met on site. And that is when
10 Mr. Huber brought out a set of plans that had Schoen that.
11 It was not depicted on the drawings that the city had.

12 Q. And the plans -- I'm going to hand you what we've
13 marked as Exhibit 45. Are these the drawings that were
14 given to you by the Wood County engineer, yes?

15 A. I'm just looking to make sure they should have
16 been. This looks like they were the railroad ones.

17 Q. Okay. And doesn't the plan show here a pipe
18 going underneath the old railroad tracks for drainage from
19 the manhole to the ditch adjacent to the CSX active track?

20 A. Yes, it does show a pipe.

21 Q. And could you cut trees -- explain to the jury,
22 when it shows a 24-inch-in-diameter pipe in these plans,
23 why the City of Toledo severed the pipe and didn't relocate
24 it?

25 A. Because at this meeting -- these plans just show

1 that there's a line here. It doesn't show a manhole or
2 where it could have gone to. When we met with Mr. Huber,
3 he actually -- I believe, he used to work for the railroad
4 a long time ago. And he told us that normally, the
5 railroad doesn't let anyone drain onto their property. We
6 believed that that pipe was not in use and that it -- when
7 it did work, it would have drained the railroad stuff and
8 no other neighbors.

9 Q. You just told the jury that that plan doesn't
10 show the manhole, correct?

11 A. Yes, I do not see a manhole.

12 Q. Wasn't the manhole like 5 feet away from where
13 that pipe was being served, yes or no?

14 A. It was a little more than that, but it was --

15 Q. 7 feet?

16 A. It was close to it.

17 Q. So you knew of the existence of the manhole, did
18 you not?

19 A. Yes.

20 Q. Did you stick a camera down in the manhole to see
21 where the water came in to the manhole?

22 A. We did not stick a camera in there, no.

23 Q. Did you know what a manhole was for?

24 A. Yes, I do.

25 Q. It's for water to collect, correct?

1 A. Correct.

2 Q. Did you know how many pipes were in the bottom of
3 the manhole?

4 A. The manhole was filled with water.

5 Q. I understand that. So there was water in the
6 manhole?

7 A. Yes, so at that time, no.

8 Q. Did you pump out the water so you could see the
9 bottom of the manhole?

10 A. At that point in time we did not.

11 Q. Okay. So you didn't know where the water went
12 from the manhole, correct?

13 A. That is correct.

14 Q. You didn't know how the water got to the manhole,
15 correct?

16 A. Correct.

17 Q. You didn't know the depth of the manhole,
18 correct?

19 A. Correct.

20 Q. You didn't know how deep the water was in the
21 manhole, correct?

22 A. The bottom of the water, correct.

23 Q. And isn't it fair to say the City of Toledo did
24 absolutely nothing as far as investigation before they
25 severed that 24-inch water drainage pipe, correct, other

1 than have a conversation?

2 A. We had a conversation and we looked and our
3 consultant who had designed the plans had never found it
4 when they did the design.

5 Q. Are you blaming your consultant?

6 A. No, I am not. I am saying we run across --

7 Q. You didn't sue them, did you?

8 THE COURT: I'm saying -- and I hope, gentleman,
9 I am saying it for the last time, do not interrupt the
10 witness in the middle of an answer, please.

11 MR. ROBON: I apologize.

12 THE COURT: Thank you. The witness may complete
13 her answer.

14 A. Thank you.

15 What I am saying is that the city runs across
16 pipes like this all the time. I'm sorry.

17 Q. Have you ever cut a 24-inch pipe in the past?

18 A. I'm sorry. We have cut pipes in the past, yes,
19 we run across old pipes all the time.

20 Q. Have you ever cut a 24-inch drainage pipe in the
21 past?

22 A. Yes.

23 Q. Next to a manhole?

24 A. I don't know if it's been next to a manhole.

25 Q. Have you ever cut a pipe without a drainage

1 investigation or a drainage study?

2 A. Yes. Uh-huh. Yes.

3 Q. What did you think that that manhole was there
4 for?

5 A. We believed it was an old manhole. When we
6 actually had come across it.

7 Q. I want to know what you thought, not what we
8 thought?

9 A. Okay. I thought that it was --

10 Q. You're the project engineer?

11 MR. BAHRET: Your Honor --

12 A. I thought it was an old manhole.

13 MR. BAHRET: Your Honor, he's doing it again.

14 THE COURT: Let's take a break. Everybody take a
15 breath. Let's allow the witness to complete her answer.

16 A. When we came across it, it was all broken up. It
17 wasn't even a manhole, as we call it these days. It's
18 almost like a clay pipe, a large clay pipe, and so we
19 believed it was old and not being used. The top was
20 falling in. It was filled with water and dirt.

21 We had that meeting with the engineer, and the
22 county and he felt that it didn't do anything if it would
23 have drained something it would have drained the railroad
24 stuff. So I'm sorry, we felt that we did our job.

25 Q. Wasn't the manhole on the edge of the railroad

1 property?

2 A. Yes, it was.

3 Q. And wasn't the manhole higher than the grade of
4 the adjacent land?

5 A. Yes, it is.

6 Q. By five to 6 feet?

7 A. It was quite a bit higher, yes.

8 Q. And you agree with me that water doesn't run
9 uphill?

10 A. Yes, I do.

11 Q. So where would the natural accumulation of water
12 that is five or 6 feet below the manhole, where would it
13 go?

14 A. Well, that was part of the confusion.

15 Q. So you didn't know where it went?

16 A. No, we did not.

17 Q. Isn't it true, Ms. Soncrant that you took a stab
18 in the dark and made a mistake?

19 A. We took a stab in the dark, yes.

20 Q. Did you make a mistake?

21 A. There -- yes, I could have made a mistake.

22 Q. Has the city done anything in the two years since
23 this has happened to correct that mistake, yes or no?

24 A. No.

25 THE COURT: Is this a good spot to break for

1 lunch?

2 MR. ROBON: Yes, Your Honor, it is.

3 THE COURT: Lunch has arrived, ladies and
4 gentlemen. We'll take our lunch break. How much time
5 would you folks like for lunch?

6 THE JURY: 45 minutes.

7 THE COURT: Which takes us to about 1:00. So I
8 show ten after. Why don't we promptly resume at 1:00 p.m.
9 We're in recess. And please remember the rules.

10 Thank you.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

s:/Angela D. Nixon

Angela D. Nixon, RPR, CRR

Date

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